(18)

No. 89-1080

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

THE BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA,

Petitioner,

vs.

ROBERT L. DOWELL, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

JOINT APPENDIX

VOLUME I

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RELEVANT DOCKET ENTRIES

CIVIL DOCKET

UNITED STATES DISTRICT COURT

THREE JUDGES
Murrah-Bohanon-Daugherty
(3-Judge court dissolved; reassigned to Judge Bohanon 7-10-62)

9452

TITLE OF CASE

Robert L. Dowell, an Infant under the age of 14 years of age, who sues by A. L. Dowell, his father as Next Friend,

Plaintiff,

vs

The Board of Education of the Oklahoma City Public Schools, Independent District No. 89, Oklahoma County, Oklahoma, a Public Body Corporate;

* * *

DATE	PROCEEDINGS
Oct. 9, 1961	Filed Complaint – with prayer for injunction – and THREE JUDGE COURT
Dec. 1, 1961	Filed Pltff's First Amended Complaint

Apr. 3, 1962	Ent trial before 3-judge court; parties appear by counsel; pltff presents case in chief offering testimony of witnesses and exhibits 1 thru 14, which are admitted; pltff rests; defts demurrer to evidence and motion to dismiss overruled; deft's case in chief, offering testimony of witnesses; deft rests; deft will furnish court with information re sex of children mention in exhibits 5 thru 13; as to merits, pltff will file brief in 15 days and deft 10 days thereafter to file brief; then case to be submitted; pltff to furnish Court with list of authorities re the jurisdictional question in a few days and it will be submitted (Murrah, Bohanon & Daugherty)
Jul. 10, 1962	Filed Order dissolving three-judge court and re-assigning case to jurisdiction of Judge Bohanon for further proceedings (Murrah-Daugherty-Bohanon)
Aug. 22, 1962	Filed Pltff's Second Amended Complaint
May 9, 1963	Ent Trial before Court: Parties appear by counsel; plf presents case in chief, offering testimony of witnesses; plf's exhibits 15 through 24 are admitted; plf

	rests; dft's demurrer to evidence overruled; continued to May 10, 1963, 10:00 a.m.
May 10, 1963	Ent further Non-Jury Trial: Dft presents case in chief, offering testimony of Jack F. Parker; dft's exhibit 2 is admitted; dft rests; dft given 20 days in which to file brief and plf 5 days thereafter to reply if he wishes; case then to be submitted.
Jul 11, 1963	Ent Order and Decree – THAT, if Robert Dowell presents himself, he shall be enrolled as a student at N. E. High School for school term beginning Sep 1963 w/o having to enroll in any course other than required of any other students; that the requested relief by dfts, Vivian C. Dowell and Gary Russell is denied. Okla. City School Board Independent District #89 and individual dfts named are permanently enjoined from continuing the "minority to majority" policy, hereby held unconstitutional, void and unenforceable; there shall be no special transfers, except in cases based solely upon scholastic study requirements or other valid good faith – in no case based on race or color; that the O. C. School Board Indep. Dist.

#89 establish a policy of integrating supervisory and teaching staffs commencing Sep 1963; dfts shall maintain complete records of all transfers made from dependent school districts into the dft school district and from school to school within the district, showing race or color of ea student and the specific reason for ea transfer, until further order of Court. Within 90 days from this date, dft School Board shall file w/ Court Clerk a complete plan for integration of Okla. City school system, both as to student body and teaching and supervisory personnel. Within 90 days, dft School Dist. shall file w/ Court Clerk the basis and all pertinent information used in the formation of respective school attendance areas, elementary, junior, and senior high school areas, insofar only as it pertains to Douglass, Central, and N. E. attendance areas. The Court retains jurisdiction to assure complete compliance w/ this Decree and for further orders justice and equity may require. (Clerk)

Aug. 6, 1963 — Filed The School Board's Program of Compliance with Court's Order of July 11, 1963

with Brief Summary of Attendance Area Changes in the Central Douglass-Northeast areas from 1955-56 to Present attached. w/s

Aug. 8, 1963 — Ent. hearing on deft's Plan and deft's Motion for new trial, w/ Counsel of record appearing and stating contentions. Testimony of Phil Co. Bennett is offered. Ct. approves school board plan, but will file his findings in a few days. Deft's motion for new trial is overruled. (Bohanon)

Aug. 9, 1965 — Ent hearing on plan. Parties appear by counsel of record. Plf. presents testimony of Dr. Earl McGovern, Dr. Willard Spalding, Dr. William Carmack, Jr. and Henry W. Floyd. Plf's Exhibit #25 is admitted into evidence. Case continued to Aug. 10, 1965 at 9:30 a.m. (Bohanon)

Aug. 10, 1965 — Ent further hearing on plan. Plf offers testimony of Dr. Chester M. Pierce. Plf. rests. Deft. presents case in chief, offering testimony of Phil C. Bennett and Jack F. Parker. Defts rest. Counsel make closing arguments. Court adopts plan of Drs. Spalding, McGovern and Carmack, said plan to be adopted by Sept., 1966. Plf. to prepare Findings of Fact, Conclusions of Law in 10 days. (Bohanon)

Sep. 7, 1965	Filed Opinion (Bohanon)
Sep. 7, 1965	Filed and entered Order that dfts submit, by Oct. 30, 1965, further desegregation plan to dis-establish segregation in O. C. public schools as to pupil assignment and transfer procedures, and hiring and assignment of faculty personnel; said plan shall provide a statement of goals to be achieved, descriptions of procedures to achieve such goals, statement of personnel responsible for carrying out said procedures, and early time schedule of steps to be taken to attain said goals. The plan shall specifically provide for: (1) New school dist. lines for Harding and N. E. Hi School and the Classen & Central attendance districts in accordance w/integration report, to be effective no later than start of 1966-67 school year – (a) Harding and N. E. to be combined into one dist. and ea. school to house all pupils residing in the new dist. eligible to be enrolled in either 7-9 or 10-12 grades, the Board to decide which school shall serve grades 7-9 & which shall serve grades 10-12; (b) Classen & Central shall be combined into one attendance dist., the decision as to which school shall serve 7-9 and 10-12 grades to be determined by Board; (2) the new

"majority to minority" transfer policy – transferees to have all rights of the school, etc.; (3) a revised special transfer policy w/specific stds & designed to eliminate requests for transfer to a school in which race of the transferee predominates; dfts shall file w/Court after opening of ea. school year, effective w/1965-66 yr a detailed summary of records concerning transfers required to be maintained by Court's Order of 7-11-63, as set forth herein; (4) desegregation of all faculty personnel so the ratio of whites to non-whites will be the same in ea. school by 1960, w/a possible 10% leeway; (5) In-service education of faculty incorporating recommendations in the integration report; (6) no inference may be drawn from this order that transportation by public school buses is indicated or inferred; (7) further study and action of the Board should be taken for complete desegregation according to law; (8) dfts to take immediate action to implement paragraphs 2 thru 5 for 1965-66 school year and report to Court within 60 days from this date the plans made and steps taken; Court retains jurisdiction and shall issue any orders becoming necessary for complete desegregation; assessment of costs and atty fees

	reserved until appropriate motions, briefs, and arguments are presented concerning same (Bohanon) (COB #68) (Copies of Opinion and Order mailed to Coleman Hayes, U. Simpson Tate, Derrick Bell, West Pub. Co., and Dr. Carmack)
Jun. 8, 1967	Filed Mandate from 10th CCofA (Judgment of Dist. Ct. affirmed in all respects except for provision requiring "in service education of the faculty" which should be eliminated therefrom; case remanded for further proceedings) OK: Bohanon
Jun. 30, 1967	Filed Board of Education's Proposed Plan for the Desegregation and Integration of the Oklahoma City School System
Jun. 30, 1967	Ent Order setting hearing on proposed plan Jul 27, 1967, 10:00 a.m. (Bohanon)
Jul. 27, 1967	Ent Hearing re Bd. of Education's Plan: * * * Court orders that part of Board's Plan be adopted and part rejected, all as per order (Bohanon)
Aug. 16, 1967	Filed Order that Proposed Plan should be approved, w/certain exceptions & modifications, as herein set forth (Bohanon)
Feb. 23, 1968	Filed dfts' Report on developments since approval of plan of

	desegregation and integration of Okla. City school system – w/s
Mar. 4, 1968	Filed Order Modifying Plan of Desegration and Integration of the Oklahoma City School System, ordering that complete consolidation of attendance areas and all grades of Harding (7-9) and Northeast (10-12) Schools, and of Central (7-9) and Classen (10-12) Schools in the next (1968-1969) school year is approved; Part 5 of the approved Plan of Desegration and Integration of the Okla. City School System filed 8-16-67 is modified accordingly; that the School Board may, at its pleasure, realign the neighborhood school boundary lines from time to time as it sees fit in the int. of good faith desegration w/o application, notice, or hearing to this Court (Bohanon) (COB #78)
Mar. 6, 1968	Filed plfs' Response to "Report of Defendants on Developments Since Approval of Plan of Desegregation" of Feb 23, 1968
Mar. 26, 1968	Filed letter from interested parties re "forced bussing" w/copies of petitions attached, bearing signatures of over 17,000 people

Jun. 12, 1969	Filed dfts' Report of Plan for Further Desegregation and Integration of O. C. School System in 1969-70 School Year w/attached Plan – w/s
Jul. 23, 1969	Ent Nonjury Trial: * * *
Jul. 24, 1969	Ent further nonjury trial: * * *
Jul. 25, 1969	Ent Further Nonjury Trial: all parties to file suggested Findings of Fact, Concl. of Law, & Judg. by Jul 28, 1:30 p.m.; set for oral argument Jul 29, 1969, 10:00 a.m. (Bohanon)
Aug. 1, 1969	Filed Order and Decree and entered same – THAT plan and supplemental plan, Exhs 1 & 2 treated as 1 plan attached hereto for further desegregating and integrating publ. school system of O. C. as submitted by Bd. of Education of O. C. Publ. Schools, are approved; ordered that said plans treated as 1, be put into force & effect for school year 1969-1970; dft/Bd. of Education ordered to prepare & file w/Clerk by Nov. 1, 1969, a full, comprehensive plan for complete desegregation & integration of O. C. Publ. School System as to students, faculty & employees of all grades, employed by O. C. School Dist.; request in atty's Motion re members Foster Estes and William Lott considered and denied; Ct. retains jurisdiction to assure

	complaince herewith or until further Order (Bohanon)
Aug. 1, 1969	Filed Report of Adoption of Supplement to Plan for Further Desegregation and Integration of the Oklahoma City School System in the 1969-70 School Year w/attached Supplement to Plan for Further Desegregation and Integration of the Okla. City School System in 1969-70 School Year
Aug. 8, 1969	Filed Order from CCofA (Order approving plan which involves school boundary changes which necessitate transportation of students from one area to another is vacated to afford Ct. apportunity to consider applicability of Section (407(a) 2, Title 4, of Civil Rights Act of 1964) and to fashion order accordingly; CCofA expresses no view re appl. of limitation to order entered but reserves judg until matter is 1st considered & decided in trial court.
Aug. 8, 1969	Filed Order and Decree; ordered that plan for further desegretating public school system of O. C. as submitted by Bd. of Education of O. C. Public Schools is in all respects approved; further decreed that dft Bd. of Education prepare by Nov. 1, 1969, for

	benefit of public & for this Ct's consideration a full, comprehensive plan for complete desegregation of O. C. School System as to comprehensive plan for complete desegregation of O. C. School System as to students, faculty and employees of all grades employed by said dft district (Bohanon)
Aug. 13, 1969	Filed/Order & Decree approving Oklahoma City School Board's Plan in all respects and the School Board is to prepare on or before Nov. 1, 1969 a full complete plan for the desegregation of the Oklahoma City School System. (Bohanon)
Aug. 28, 1969	Filed cert. copy of Order of CCofA, constituting Mandate
Aug. 28, 1969	Filed Mandate: Order of Dist. Ct. vacated; case remanded for consideration & adoption of plan for complete desegragation & integration of OC School system per court's order of 8-13-69 (Murrah, Breitenstein & Hickey)
Sep. 2, 1969	Filed cert. copy of Order of Supr. Ct. of U. S., granting applicants' mtn & vacating order of CCofA and reinstating order of U. S. Dist. Ct. pdg filing of an opposition to this mtn by the McWilliams group of intervenors by Sep 2 and further consideration then by Justice of this Ct. (William J.

	Brennan, Jr., Acting Circuit Justice)
Sep. 11, 1969	Filed Order that mtn to delay making, preparing & filing of plan of desegregation of jr. & sr. highschools of O. C. Pub. School System is denied & good faith plan is to be filed by Oct. 31, 1969; that mtn to delay making, etc., good faith plan of deseg. insofar as it affects elementary schools in dft dist is granted & dft Bd. is granted until Mar 31, 1970, to prepare such plan re elementary schools; Ct. orders U. S. Office of Education &/or its designate to assist dft School Bd in developing good faith plan for school deseg.; dft School Dist. ordered to fully cooperate w/its available funds provided under Title IV of Civil Rights Act and human resources available in an effort, & in conjunction w/U. S. Dept. of Educ. or its designate to develop an acceptable plan that will effectively deseg. school system; if plan, after its formulation, & as presented, is not acceptable to Ct., then Ct. will request US Off. of Educ. or designate to submit itw own recommendations to Ct. for consideration; that request that School Bd. not pass on & approve any plan of deseg. which might, by chance, be under supervision of another

School Bd, is w/o merit & it is ordered that present & all future School Bds, Supts of Schools, & employees of the Dist. are subject to deseg. laws as laid down by Supr. Ct. of U. S., and new or different School Bd, Supt., or subordinates cannot & will not of & in themselves change the law; Clerk directed to forward by cert mail a cert copy hereof to Dept. Director, Equal Educ. Opportunity Div., U. S. O. E., to U. S. Commr. of Educ., Gen. Counsel, U. S. O. E., and to Director of Consultative Center for School Deseg., Norman, Okla. (Bohanon) (copies mailed to parties of record & cert. copies as ordered – LDS)

Nov. 6, 1969 — Filed Dfts' Report of Comprehensive Plan for Complete Desegregation of Senior and Junior Highschools of the Oklahoma City Public School System After 1969-70 School Year – w/s

Dec. 15, 1969 — Ent Hrg. re School Bd's plan: * * *

Dec. 16, 1969 — Ent Further Hrg re plan: School Bd's cluster plan accepted by Ct. w/exceptions (Bohanon)

Jan. 12, 1970 — Filed dfts' Report of Adoption of Supplement to Comprehensive Plan for Complete Desegregation of the Junior and Senior High Schools of the Okla. City Public Schools After the 1969-70 School Year w/Supplement attached as Exh A – w/s

Jan. 17, 1970 — Filed Opinion and Order: All facts found herein and previous Orders, all competent evidence of record are relied upon to support this order; Deft Board's report for Comprehensive Plan & Supplement, APPROVED: Deft Board to file with the Court written reports by 6-15 and 10-15, 1970 with details re Dunjee and Kennedy schools: order applies to all parties to this action; specifically includes present & future members of said Board, and present and future superintendents and assts of O.C. Schools.

Feb. 19, 1970 — Filed copy of the Opinion per curiam of U.S. Supreme Court decided Dec. 15, 1969 (their case #603) Petition for certiorari granted – order of Court of Appeals vacated and case remanded to that court. (This copy received from Judge Bohanon's office)

Apr. 27, 1970 — Filed Order that dfts be granted to Oct 31, 1970, to prepare & file comprehensive prel. plan for total unification of elementary schools & until Mar 31, 1971, to prepare & file comprehensive, detailed final plan of desegregation to be fully effective by start of 1971-72 school term & are granted approval of their Interim proposals for further

desegregating & integrating elementary schools; HE&W ordered, immed., w/coop. of dfts, to begin a study & make recommendations for plan of desegregation for O. C. Pub. Schools as stated in oral opinion; copy hereof to be promptly mailed to Sec. of U. S. Dept. of HE&W (Bohanon)

Aug. 21, 1970 — Filed Findings and Order: Court finds and condludes [sic] that the time has come for this Court to divest itself of jurisdiction and end this case; it has fully & completely performed its duties required by the Constitution of the U.S. Court has approved defts' Cluster Plan, modified by the Court of Appeals; should the Bd. of Education not in good-faith operate under its declared Cluster Plan & should there be failure to desegregate the junior & senior high schools as provided by the Constitution, such failure should be brought to the attention of the Atty. Gen. of the U.S. Courts always open to perform functions in a plenary action brought by the Atty. Gen. Order heretofore ent. that HEW aid deft Bd. of Edu. in preparing & reporting plan of desegration of elementary schools now modified in that if deft Bd. of Edu and HEW should be unable to arrive at

proper plan of desegration of elementary schools, then the matter should be submitted to the Atty. Gen. of the U. S. DECREED that all orders heretofore entered by the Court in matter of desegregation of O.C. Public School System, be and remain in full force and effect, except as modified in paragraph 5. ordered that this case be and is hereby closed.

Oct. 12, 1970 — Filed Second Report of Bd. of Educ. on Implementation of Comprehensive Plan for Complete Desegregation of Junior & Senior High Schools of the O. C. Pub. Schools – ws

Nov. 20, 1970 — Filed Report of Adoption of Comprehensive Plan for Further Desegregation of the Elementary Schools of the Oklahoma City Public School System – w/s

May 3, 1971 — Filed Order: Findings and Order of this court of Aug. 21, 1970 vacated and set aside. (Bohanon)

May 7, 1971 — Filed Order for Dft to File report on Comprehensive Plan for Desegregation of Junior & Senior Highschools and for Counsel to File Appearances; ordered that dft School Dist. w/in 15 days herefrom file comprehensive report setting out things herein stated and hrg

will be held at early date upon suggested plans for deseg. of elementary schools; ea counsel who intends to further participate herein directed to file w/in 10 days hereof written appearance & state party(ies) represented & notices re further settings in this case will be forwarded to those counsel who so file appearances (Bohanon)

Sep. 1, 1971 — Received Order from CCofA re hrgs
Filed CCofA's Order that trial ct, forthwith, hold hrgs to determine effectiveness of plans heretofore approved by this Ct for the jr. & sr. hi schools of O. C. & to hold hrgs to evaluate expected effectiveness of plan for elementary schools; modification of either or both plans thereupon found necessary or addl plans to accomplish deseg. of O. C. public schools in accord. w/Supr. Ct.'s guidelines shall then be put into effect forthwith w/their implementation thereof to be accomplished in shortest poss. time (Breitenstein, Hill, & Seth)

Sep. 21, 1971 — Ent Hrg re status of operations: * * *

Nov. 9, 1971 — Filed copy of PLAN for the Further Desegregation of Oklahoma City Public School System (dated Nov. 1, 1971)

Nov. 18, 1971 — Ent Hrg re plan of deseg.: * * *

Nov. 19, 1971 — Ent Further Hrg re plan of deseg.: * * *

Dec. 3, 1971 — Filed Order, creating Bi-racial Committee (6 ea black & white members), to be apptd by Ct as herein set out, w/lists to be submitted w/in 10 days hereof by plfs & the Board in accord. herewith; after appt, Committee shall select chairman to serve 6 mos, w/chairmanship to rotate between white & black members; members shall be apptd for 2-yr terms; however, members of orig. Comm. shall draw lots whereby 6 shall serve only 1-yr term & vacancies of retiring members to be filed by Ct appt of persons of same race; in event of death, etc., new member to be of same race as member replaced w/nomination & appt to be made as herein set forth; Comm.'s function shall be to act as agency of Ct to advise Sch. Bd. & Ct. re practical appl, etc. of comprehensive plan for deseg., to periodically review operation of plan & other matters, all as more fully set out herein, but shall not supersede the Board; School Bd, et al., are enjoined & directed to cooperate fully w/Comm. & shall desig. not less than 1 nor more than 3 persons, members of Bd or Supt's supervisory staff, to act as liason, etc.; Comm. directed to avail itself of expertise, etc., of Community Relations Service of Dept. of Justice

when poss.; Sch. Bd. & said Comm. are to make bi-ann. reports on Nov 1 & May 1 to Ct re maintenance of a unitary school system, to incl info herein set out; said Comm. will function & this Ct will retain jurisd. of case until Ct finds that unitary system has been established (Bohanon) (copies mailed – sjb)

Dec. 9, 1971 — Ent Hrg re Plan of Deseg.: * * *

Feb. 1, 1972 — Filed Memorandum and Order – THAT Ct's order of 1-16-70 approving Comprehensive Plan for Deseg. of Sr. & Jr. High-schools of O. C. Pub. School System After 1969-70 School Yr and any subseq. order relating thereto are vacated & set aside; dft School Bd & indiv. members thereof, present & future, & Supt. of Schools shall implement & place into effect, beg. school yr 1972-73 A New Plan of Unification for the Okla. City Pub. School System, embodying principles & suggestions contained in plfs' Plan attached & incorporated by reference; plan for sr., jr., 1st alt. plan for elementary schools, & plan for Star-Spencer-Dunjee area are specif. approved; dft Sch. Bd. shall not alter or deviate from New Plan w/o prior approv. & perm. of

Ct. &, if uncertain re meaning or intent thereof, should apply to Ct for interp. & clarific.; Sch. Bd. may consider whether to chg structure as set out, whether 1973 grad. srs. should be permitted to elect to remain & graduate in school they have been attending, & other related matters; any proposed chgs to be referred to Biracial Committee for recommend. to Ct; spec. phase-in programs must be initiated in 1972 spring, as more fully set out herein; this order is binding upon dft Sch. Bd., its members, et al.; any attempt to hinder, etc., Sch. Bd., its members, etc., in exec. hereof shall be reported to Dept. of Justice thru U. S. Atty for W. D. of Okla. for approp. proceedings to safeguard federally protected rights & activities & to prevent obstruction of this order; jurisd. is retained by ct. for further orders (Bohanon)

Feb. 4, 1972 — Filed Order Implementing Bi-Racial Committee; * * *

7-7-72 — Filed Opinion from Clk of CCofA that judgment of USDC, WD Okla is affirmed (Lewis, Breitenstein & Seth)

11-1-72 — Filed Bi-Annual Report on Maintenance of Unitary School System – w/s

8-6-73 — Filed Bi-Annual Report on the Maintenance of a Unitary School System

8-6-73	Filed Semi-Annual Report of Biracial Committee May 1, 1973
10-31-73	Filed Bi-Annual Report on Maintenance of a Unitary School System, due Nov 1, 1973
11-1-73	Filed Bi-Annual Report of Biracial Committee
4-30-74	Filed Semi-annual Report of Biracial Committee May 1, 1974
4-30-74	Filed Bi-Annual Report on the Maintenance of a Unitary School System May 1, 1974
10-29-74	Filed Bi-Annual report on the Maintenance of a Unitary school system
10-31-74	Filed semi-annual report of Biracial committee
6-2-75	Filed dfts' Mtn to Close Case ws
6-5-75	Ent Order directing plf to file response to dfts' mtn for order to close case w/in 10 days hereof
6-9-75	Ent Order: By direction of Judge Luther Bohanon, a copy of dft's mtn to close case is being mld this date to all members of the Biracial Committee & the Committee is asked to submit a response w/i 15 days. (Bohanon)
6-17-75	Ent Order directing plf to file formal pldg w/in 10 days hereof as ltr rec'd June 16 will not suffice (Bohanon)

6-17-75	Filed Mr. Walker's letter to Ct, being response to dft's mtn to close case (or in alt., req. for ext of time of 5 days from date of "his Honor's reply to file proper pldg)
7-3-75	Filed plfs' Oppo to Mtn to Disms & Memo Brief – ws
10-31-75	Filed Bi-Annual Report on Maintenance of A Unitary School System by dfts Filed Semi-Annual Report of Bi-Racial Committee Filed Positive Activities Okla. City Public Schools
11-5-75	Ent Order: case set for hrg dft's mtn to close case 11-18-75 @ 10:00 a.m. (Bohanon)
11-18-75	Ent Hrg on Mtns: statements made dft presents mtn to close case w/test of witnesses & rests: plf presents objs w/test of witness & rests; ct takes mtn under advisement (Bohanon)
2-19-76	Filed Order Appointing Members of Bi-Racial Committee; * * *
4-22-76	Filed Biannual Report on the Maintenance of a Unitary School System
10-27-76	Filed Biannual Report of the Maintenance of a Unitary School System – ws
12-1-76	Filed Biannual Report of the Biracial Committee dated 12-1-76

1-18-77	Filed AND ENTERED Order Terminating Case – The Biracial Committe Established by the Ct's Order of 12/3/71, which has been an effective & valued agency of the Ct in the implementation of the Plan, is hereby dissolved; Jurisdiction in this case is terminated ipso facto subject only to final disposition of any case now pending on appeal (Bohanon) (COB#118) (clerk) (copies mailed-sjb)
2-13-78	Filed Order Directing Clk to Pay Assigned Attys' Fees; * * *
2-7-79	RECEIVED $67,777.77 TENDER from Board of Education, Okla. City, Okl.
02-19-85	MOTION To Reopen Case, To Intervene & For Fur Relief-n/s.
03-06-85	DEFENDANTS' Resp to Mtn to Reopen Case-w/s.
03-13-85	ORDER that before the ct can make any ruling w/re to applicants' mtn, the ct should conduct an evidentiary hrg. Mtn to intervene & reopen & dfts' resp join the issues & the matters are set for evidentiary hrg 4-8-85. 10:00 a.m. (BOHANON)
3-27-85	ORDER that hrg set for 4-8-85 is passed to 4-15-85, 9:30 a.m. due to sched conflict w/Judge Brett on 4-8-85.

4-15-85	EVIDENTIARY hrg on mtn to reopen: Ct grnts Ted Shaw to practice law in this cs only Ct receives Mr. Masem as expert witn, Ct adjourns til 4-16-85 at 9:30 am (BOHANON) bm
4-16-85	EVIDENTIARY hrg on mtn to reopen: Ct finds propsed plan of 12-17-85 should & is approved Ct finds K-4 plan is a goodfaith pln, Ct finds plf mtn to reopen denied. Plf makes oral mtn to stay order for purposes to appeal. Ct denies plf mtn to stay order. Dft to submit suggested FofF&CL w/i 5 days to Ct.
8-13-85	ORDER Deny Stay: re mtn of plfs Dowell, et al & applicants for intervention to stay judgment by Ct on 4-25-85; mtn to stay this Ct's judg is denied. (BOHANON)
7-25-86	CCA'S cert cpy of judg (reversed, remanded) (Moore, Anderson & Johnson)
02-05-87	SCHEDULING Order: * * *
03-24-87	ORDER modifying Scheduling Order: * * *
03-25-87	ENTER ORDER: the Final PT Conf prev sch for 10:00 am on Fri, 4-10-87 is hereby stricken & resch for 10:00 am on Thurs, 6-4-87; the Non-Jury Trial prev sch for 10:00 am on Mon, 4-27-87 is hereby stricken & resch for 10:00 am on Mon, 6-15-87 (BOHANON) kb

05-05-87	SCHEDULING/STATUS CONF: Thurs, June 4, 1987 at 10:00 am (BOHANON) kb
05-05-87	NON-JURY TRIAL: Mon, June 15, 1987 at 10:00 A.M. (BOHANON) kb
05-22-87	ORDER that ptys to submit PT Order & Trial Brfs by 5-27-87; further order that proposed FF&CL to be subm w/in 2 wks following the trial of this case
05-27-87	PRE-TRIAL Brf of Amicus Curiae United States
05-27-87	PLAINTIFFS' Trial Brf – w/s
05-29-87	FINAL PT Order
05-29-87	TRIAL Brf of the Oklahoma City Board of Education – w/s
06-04-87	STATUS/PT CONF: ptys agree & are ready for trial 6-15-87; * * *
06-04-87	APPEARANCE of Ronald L. Day as cnsl for dft Board of Education
06-04-87	APPEARANCE of Theodore M. Shaw as cnsl for plfs
06-04-87	APPEARANCE of Norman J. Chachkin as cnsl for plfs
06-15-87	NON-JURY TRIAL: * * *
06-16-87	NON-JURY TRIAL (2nd day)
06-17-87	NON-JURY TRIAL (3rd day)
06-18-87	NON-JURY TRIAL (4th day)
06-19-87	NON-JURY TRIAL (5th day)
06-22-87	NON-JURY TRIAL (6th day)

06-23-87	NON-JURY TRIAL (7th day)
06-24-87	NON-JURY TRIAL (8th day): * * * ptys to file Suggested FF&CL by 8-1-87, after which time a hrg will be set for hrg final oral args; Ct recessed until further notice
9-08-87	ORDER deadline for submtg proposed FofF&CofL ext to 9-29-87 (BOHANON)
10-2-87	ORDER United States' Mtn for Lv to file Post-Trial Submission Amicus Curiae in excs of 20 pgs grtd
10-2-87	POST-TRIAL Submission of Amicus Curiae United States
11-10-87	ORAL ARGUMENTS SET FOR HRG, 11-19-87, 10:00 am
11-30-87	HRG ON ORAL ARGUMENTS: Cnsl apr & hrg conducted; cnsl make opening statemtns & plf & dft prsnt argumnts; Ct will not decide case today but will file FF&CofL & Judgmnt w/i few days

12-9-87	MEMORANDUM Opinion
12-11-87	ORDER Judgement & Decree that fm Jan '77 to prsnt, dft Bd maintained unitary school system in keeping w/US Constitution; Ct vacates & holds for naught the '72 injnctn implementing Finger Plan along w/all other injunctions; Bd's 1985 K-4 neighborhood school plan was adopted w/o discriminatory intent & is constitutional; Ct again, as in '77, terminates jurisdiction over unitary system; Ct dism action at cost to plf

IN THE UNITED STATE DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, etc., Plaintiff,	)	
vs.	)	No. Civil 9452
THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, et al, Defendants.	)	

MOTION TO CLOSE CASE
(Filed Jun 2, 1975)

The Defendants respectfully state that this action should be terminated and the case should be closed for the reasons hereinafter set out.

In the first appeal that was taken in this case (*Board of Education of the Oklahoma City Public Schools v. Dowell*, 375 F.2d 158), the United States Court of Appeals for the Tenth Circuit stated as to this Court's retention of jurisdiction that,

> "jurisdiction should be held until such time as the court is satisfied that the decreed unconstitutional practices are eliminated and appellant board is found to be in full compliance with the teachings in the Brown case".

The Oklahoma City School District is in full compliance with the "teachings" in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); therefore, the Court should relinquish jurisdiction.

In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), it was

stated that further intervention by a District Court should not be necessary, when school authorities have achieved full compliance with the decision in *Brown I.*

The Oklahoma City Board of Education has eliminated all vestiges of State-imposed racial discrimination in its school system, and is now operating a unitary school system.

The School District has integrated faculties and staffs at all schools; it has complied with the Court's order of February 1, 1972, adopting the so-called "Finger Plan", and modifications thereof; and as shown by the Biannual Report filed herein on April 17, 1975, it has in all of its schools, except Arcadia Elementary School, a ratio of white and black students that does not vary a much as 20% of the ratio of the entire system, which is in accord with the decision in *Adams v. Richardson, Secretary of the Department of Health, Education, and Welfare,* 356 F.Supp. 92 (1973), and guidelines of the United States Department of Health, Education, and Welfare in school integration.

In *George v. Davis,* 365 F.Supp. 446 (1973), it was held that a school desegregation case involving schools that have been integrated according to law should be closed. It was pointed out that if there were any future violations of the law, a new lawsuit could be filed.

Since the objective of this case, viz., integration of the Oklahoma City Public School System, has been achieved, operation of the System should be returned to local control.

In *Milliken v. Bradley,* ___ U.S. ___, 94 S.Ct. 3112, 3125, 41 L.Ed.2d 1069, it was said:

> "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process".

If the Court does relinquish jurisdiction, the Board of Education will establish a standing multiracial committee to assure optimal equal educational opportunities for all pupils. The committee would be comprised of representatives of the various races within the community; and on a predetermined schedule would report to the Board and would function until determined by the Board to no longer serve a useful or beneficial purpose.

Wherefore, the Defendants move the Court to terminate this action, relinquish further jurisdiction herein, and close the case.

J. Harry Johnson
603 First National Center West
Oklahoma City, Oklahoma 73102
Telephone (405) 235-7413

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the ___ day of June, 1975, he sent by United States Mail, postage prepaid, a copy of the foregoing to the following attorney of record for the Plaintiff:

John W. Walker
622 Pyramid Life Building
Little Rock, Arkansas 72201.

WALKER, KAPLAN & MAYS, P.A.
ATTORNEYS AT LAW
622 PYRAMID LIFE BUILDING
LITTLE ROCK, ARKANSAS 72201
AREA CODE 501-347-3758

JOHN W. WALKER
PHILIP E. KAPLAN
RICHARD L. MAYS
JOHN M. BILHEIMER
HENRY L. JONES, JR.

OF COUNSEL
WILEY A. BRANTON
825 SIXTH STREET, S.W.
WASHINGTON, D.C. 20024
Phone: 202-554-5448

June 13, 1975

Hon. Luther Bohanon, Judge
United States District Court
U.S. Post Office & Courthouse Bldg.
Oklahoma City, Oklahoma 73102

Re: Dowell v. Bd. of Education
NO. Civ-9452

Dear Judge Bohanon:

This letter is intended as a response to defendant's motion to close this case. It is not in pleading form because in my considered judgment the motion is clearly premature. First, the matter is still being litigated and a number of issues remain unresolved. For example, there is pending before the U.S. Supreme Court a petition for a writ of certiorari regarding staff assignments. We have just today filed our opposition thereto. A copy of same is included herein for the Court's information.

There is also open for question whether the present desegregation plan is equitable and fair to black students in terms of equal burdens (transportation, etc.) and benefits; and to black staff in terms of the lack of establishment and implementation of objective criteria for promotions, transfers, etc. I note in this regard that your

Honor found in the latest appealed from Order that there was a pattern of assignments of principals that was discriminatory. That finding is thus essentially that not all roots and branches of discrimination in the system have been eliminated.

Third, there is the question of counsel fees which, of course, could be left open for further hearing.

Fourth, the Supreme Court through its pronouncements clearly did not intend to have cases like this one extend ad infinitum but did intend that jurisdiction be retained until such time that full desegregation was achieved in a manner sufficient to insure that resegregation would not occur. We therefore respectfully submit that in view of the litiguous posture of the board, the unresolved issues and the absence of a finding that resegregation will not occur under the present plan, the Court should retain jurisdiction for a while longer.

In the event that this letter does not constitute compliance with the Court's Order, please consider same to be a request for an extension of time of five days from the date of his Honor's reply to me in which to file the proper pleading.

Respectfully,

John W. Walker

JWW/jc
cc: Mr. J. Harry Johnson
Mr. Larry French

Enclosure

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, etc., et al., PLAINTIFFS,	)	
Vs.	)	CASE NO. 9452 CIV.
BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, etc., et al., DEFENDANTS.	)	

OPPOSITION TO MOTION TO DISMISS AND MEMO BRIEF

The defendants have filed their motion to dismiss the case in chief and set forth as the reason therefor that the desegregation issues are now resolved no longer necessitating the Court's continuing jurisdiction. Plaintiffs oppose the Motion to Dismiss both on the basis of the law and the facts.

In summary form, the Supreme Court has approved the concept that district courts "should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved." *Rancy v. Bd. of Education*, 391 U.S. 443, 449 (1968) (citing Kelley v. Altheimer, 378 F.2d 483, 489 (8th Cir. 1967)). In holding that dismissal "will ordinarily be inconsistent with the responsibility imposed upon the district courts", the Court reiterated that jurisdiction should be kept by the lower courts until "disestablishment has been achieved", supra; and until "racial discrimination through official

action is eliminated from the school system". *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 32 (1971).

While the law is clear that it is inappropriate for a district court to dismiss a school segregation case until desegregation has been achieved, the facts in the district amply demonstrate that that hoped for status has not yet been reached.

Plaintiffs submit that the findings of the Court and the various reports from the bi-racial committee establish that the board is not proceeding to meet its desegregation duties in objective good faith. Indeed, the bi-racial committee has only recently found, on information and belief, that the defendants were continuing practice of racial discrimination in the inschool treatment of black students.

Were the defendants in a posture where their public utterances promoted respect for an acceptance of the law of the land and were their instructions to their subordinates who run the school clear and definitive in this respect, perhaps good faith would be established. But the official policy is still to be contentious and litiguous, thus placing on plaintiffs and the Court the responsibility for overseeing the desegregation process and protecting black school children.

When the results test is applied, the board is also defective. The "Finger" plan as it has come to be called has not been fully accepted by the defendants. The facts will show that that plan was designed to equalize the burdens and benefits upon black and white students alike. But the defendants have allowed the plan to be

implemented in a manner where the desegregation burdens upon blacks are grossly disproportionate without instituting any compensating features to minimize the effect. Thus, blacks ride buses in far greater disproportions; have schools which are located in "their" communities phased out more under the guise of low attendance, etc.; and are far more likely to be suspended or expelled from school for subjective reasons than white students.

Just as previous plans submitted by defendants failed to meet the "results" test, so does the present plan. For it has been emasculated by defendants. The constitutional tests are the same after the bodies are gotten together as before – whether the school system affords each child equal educational opportunity pursuant to objective, definable and fairly implemented standards. Plaintiffs submit that defendants have not yet met that test, and that until they do the Court must retain jurisdiction of this cause.

Plaintiffs incorporate herein by reference the remarks made in their letter to the Court of June 13, 1975.

In conclusion, plaintiffs submit that defendants have not met the desegregation requirements of the law; that the schools are yet segregated; and, thus, that that dismissal of the case in chief is inappropriate.

WHEREFORE, plaintiffs respectfully submit that the Motion to Dismiss should be denied.

Respectfully submitted,

WALKER, KAPLAN & MAYS, P.A.
622 Pyramid Life Building
Little Rock, Arkansas 72201

JOHN W. WALKER
HENRY L. JONES, JR.

By _____
John W. Walker

Attorneys for Plaintiffs

I certify that a copy of the foregoing was furnished opposing counsel of record by mailing same to the usual business address of such counsel on June 30, 1975.

_____

_____

[p. 1] IN THE DISTRICT COURT
OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT L. DOWELL, an infant, who sues by A. L. DOWELL, his father and next friend, et al,	)	No. 9452 – Civil
Plaintiffs,	)	
vs.	)	
THE BOARD OF EDUCATION OF THE OKLAHOMA CITY PUBLIC SCHOOLS, et al,	)	
Defendants.	)	

BEFORE:

HONORABLE LUTHER BOHANON
United States District Judge

PROCEEDINGS AT HEARING

Oklahoma City, Oklahoma

November 18, 1975

APPEARANCES:

For the Plaintiffs:

John W. Walker, Attorney at Law & Henry L. Jones, Attorney at Law, Little Rock, Arkansas

For the Defendants:

Harry E. Johnson, Attorney at Law
First National Building
Oklahoma City, Oklahoma 73102

[p. 2] INDEX

PROCEEDINGS:

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(p.m.) 74

WITNESSES:

Name

November 18, 1975

(For the Defendants)

Paul English. . . .
Direct 10 . . .
Cross 18 . . .
Redirect 59 . . .
Recross 62

Thomas J. Smith. . . .
Direct 74 . . .
Cross 85 . . .
Redirect 127 . . .
Recross

Shirley Darrell. . . .
Direct 129 . . .

EXHIBITS:

November 18, 1975

Plaintiff's Exhibit 1 . . . document re suspensions ..... p. 46

2 . . . newspaper article 102

[p. 3] PROCEEDINGS

November 18, 1975

THE COURT: The Court has for hearing this morning the application of the of the School Board to close out this School Board case.

I want to say to the School Board, to you, Mr. Johnson, and all others concerned, that the Court would have great pleasure in closing out this case. Of course it is the oldest case on my docket, and I am sure it's the oldest case in this court; probably the oldest case in the state.

I would be very glad indeed to close the case out but the court has had a duty imposed upon the Court under the Constitution to require the School Board to desegregate a dual school system and to complete a unitary school system.

Down through the years the School Board has been rather stubborn in its concept of what the constitutional requirement means, and I am sure the School Board will say the same thing about this Court, that the Court has been rather stubborn about what desegregation of the school system means in a constitutional sense.

I am sure that the School Board down through the years has convinced themselves that desegregation has been, through the years, in compliance.

The record shows that the School board through its [p. 4] officials has said that desegregation of the school system was a desegregation when one black student was in a white school, or when one white student was in a black school.

Of course the Supreme Court has said this does not constitute desegregation at all.

I want to say that there has been much said about this Court having control over the School Board. Well, this is not true. This Court has never had any control over the School Board except as required by the Constitution to see that the School Board does desegregate the school system. Other than this, the Court has no control and never exercised any control whatsoever; does not now and never has and never will exercise any control over the School Board except as it is necessary under the Constitution for the School Board to desegregate the schools in good faith and in compliance with the Constitution.

Mr. Johnson says in his motion that he has complied, or the School Board has complied with the Brown case, one and two. I think if it were left up to the School Board, Mr. Johnson would have said this probably four or five years ago, but that wasn't true then. The Court will hear what the evidence is and determine what should be done.

If this Court finds that the School Board has in good faith desegregated the schools, and in good faith will continue the desegregation of the schools, then nothing would make me happier. This Court in years gone by has entered numerous [p. 5] orders, all of which the School Board elected to appeal from. That is, that I can remember. And none of these orders of this Court have been reversed that I can think of. This Court has been affirmed in all these orders in requiring this School Board to desegregate the public schools of Oklahoma City.

I am very proud of what the School Board has in the past two or three years done and are doing. I know they are doing a whole lot better job than in the early years,

and if you are not in compliance, strict and full compliance with the Constitution, you are moving in that direction. This makes me very happy.

As you all know, I took senior status more than a year ago, and I have finished out all of the cases that I have of the old cases, and I'd like very much to close this case out and will do so as soon as the School Board has in good faith met the constitutional requirements of desegregating these schools, or its schools, under the constitutional requirement.

Now Mr. Johnson, the Court will call upon you. Do you have anything to say in connection with the hearing before the Court today? The Court will hear you if you do, then I will call on Mr. Walker and Mr. Jones, and then we will hear the proof.

MR. JOHNSON: If the Court please, of course we, the School Board has been making two reports a year, due on May 1 and November 1.

[p. 6] THE COURT: Yes.

MR. JOHNSON: It is our position that these do show the progress that has been made by the Board in carrying out the Finger Plan.

We plan to call two witnesses. One is the president of the Board of Education, and to explain to some extent what we have done in addition to what we were required to do, what we think we were required to do. And that will be Mr. English, the president of the Board.

We have a new president of the Board. We have a new superintendent. Dr. Smith will be our second witness and final witness.

As you say, throughout the years there have been appeals from your Honor and I don't believe we have reversed yet.

THE COURT: Well, everything I have done, Mr. Johnson, I want you to know and I want the School Board to know and the public to know, I have done it because the Constitution of our country requires that I do it. This is the only reason. I have no other interest whatsoever.

MR. JOHNSON: Certainly I do understand that. We do feel this litigation has been going on for about twelve years now and the Board felt that its May 1st report showed that the school system was unified. Based on that, why then they have filed the motion to close the case which is before the Court to- [p. 7] day.

Of course we believe counsel is in agreement that this Court has the authority to close the case and a duty to close it if the system has achieved unification. We realize that for us to satisfy the Court we do have to unify the system.

We do realize that if the Court does relinquish jurisdiction that we will probably be subject to the scrutiny of the Department of Health, Education and Welfare. Our Superintendent spent several hours in the past with the people in Dallas with H.E.W. He is familiar with their guidelines and we feel that as well as having carried out the Finger Plan, that we are in accord with those guidelines and standards of H.E.W. that are followed in other cases; and we do expect to prove by our witnesses that we have achieved the state that has been the Court's goal and our goal.

THE COURT: Thank you, Mr. Johnson.

Mr. Walker?

MR. WALKER: Your Honor, Mr. Johnson, our position is that the test of whether or not the Court can relinquish jurisdiction is whether or not all vestiges of segregation or racial discrimination have been eliminated.

We suggest to the Court that the test is not merely in the numbers of children who attend each particular school or the racial composition of the staff of each particular school, or within the system as a whole.

[p. 8] We feel that the test first of all, as I understand it, is the good faith of the School Board and that good faith is to be measured objectively now by the conduct of the School Board, such as whether or not the School Board before proceeding to engage in new school construction or school closings or school disposition, by the way of sale and the like, has obtained or otherwise secured prior court approval. That's one thing.

Another thing is what happens to the children within the school; that is to say, are children assigned to classes on a racially segregated basis, are they assigned to special, a subsection within classes, are they suspended in numbers disproportionate to their racial composition within the school system? Are the reasons for which suspensions or push-outs take place objective and related to the educational process?

Those are the kinds of issues I think that remain in this litigation, and we suggest to the Court that unless the School Board an [sic] affirmatively demonstrate that they

have met the good faith tests and that the members indicate that all the branches of the tree which were infested with discrimination are removed, that the Court cannot relinquish jurisdiction.

Now the second thing is that we have pending a motion for counsel fees. We have supporting data to file with the Court this morning. And we would not like to take on both issues at the same time. We think the major issue of course is [p. 9] whether or not the Court should relinquish jurisdiction, and we would suggest that his Honor deal with that issue first and foremost. The other issue is rather minor.

THE COURT: Do you have such application for attorney fees?

MR. WALKER: Yes, your Honor.

THE COURT: When was it filed?

MR. WALKER: We had filed a motion for allowance of counsel fees back in 1974. We have not presented verification of time or anything like that because it is very difficult because of the protracted nature of this litigation to determine when we should cut it off.

When we thought we were about in a position to submit a time statement, there was another appeal from his Honor's decision regarding the principals, and that matter was taken through the Court of Appeals, resulting in oral argument I think on November 11, 1974, and a petition for reconsideration in the Court of Appeals which was finally decided upon by the Court of Appeals sometime in January or February.

Then there was a further motion in the Supreme Court seeking certiorari, for which we had to file an opposition petition.

So that we are prepared to submit our time statement today, but before doing that we would like to have a few minutes after the case in chief to confer with Mr. Johnson. [p. 10] He and I have had some discussion about the matter, and if possible, as much of the issue as can be agreed upon between us would be appropriate without having to submit it to the Court unless absolutely necessary.

Thank you.

THE COURT: Again I want to say that when the business of this Court has been completed, this Court will relinquish jurisdiction and close this case. From all the authorities I have read, I have no right, and should I close this case out or relinquish jurisdiction prematurely, it would on appeal to the Circuit Court be reversed; so we are now just looking at the cold facts and truth as to whether or not the School Board has and will continue desegregation in a constitutional manner.

Are you ready to call your first witness, Mr. Johnson?

MR. JOHNSON: Like to call Mr. Paul English as our first witness.

THE COURT: Mr. English.

PAUL ENGLISH,

called as a witness on behalf of the defendants, being of lawful age and having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Johnson:

Q Will you state your name and your official position with the Oklahoma City Public School System?

A Paul English, President of the Oklahoma City Board of Edu-[p. 11]cation.

Q How long have you been president of the Board of Education?

A Since December 12, 1974.

Q Mr. English, I have handed you a copy of a motion to close the case which was filed in this case on June 2, 1975, and ask you whether you are familiar with its contents?

A Yes, sir, I am.

Q Was it filed pursuant to official action of the Board of Education?

A Yes, sir, it was.

Q To your knowledge, are the factual statements in the motion correct?

A Yes, sir.

Q The motion refers to the biannual report that was submitted to the Court on April 17, 1975. Has there been another biannual report filed since then?

A Yes, sir, within the past month there has been a more recent report.

Q That was the report that was due on November 1st?

A Yes, sir.

Q And filed on October 31, 1975?

A Yes, sir, that's correct.

Q Does the Oklahoma City list a count in all of its schools a ratio of white and black students that does not vary as much as 20% of the ratio of the entire system?

[p. 12] A Yes, sir, with the exception of Arcadia, which is geographically isolated and was treated in a little different manner under the Finger Plan and also in the Star-Spencer area, which the Court has already held can be treated as a separate community.

Q For racial balance purposes?

A Yes, sir.

Q Has the School District had any activities to foster further desegregation of the schools that were not required by the Finger Plan?

A Yes, sir, it has in past years and in most recent years. If I may refer to –

I think under some of the things that, say activities, increased student participation in activities within the schools, so that the students can get together in a more informal basis than just in a formal classroom setting; and that here we have a communication specialist in the schools under a federal grant that we have applied for. That person is to make students, all students especially under this grant, minority students, aware of the various activities that are available to them within the schools and the purpose is that more minority students would become involved in these activities.

We also have activity buses, additional activity buses provided at the end of the school day so that students who are bused into the schools can participate in after school activities [p. 13] and still have transportation home.

Early under the Finger Plan there was some problem that this was a deterrent to students who were bused in, that they had no way to participate and then get home, and now we do provide the buses for them.

The District also provides a cheerleader's workshop each year, for which the District pays the expense of this workshop whereas in the past cheerleaders would have to come with the money to pay for going to a workshop outside of the District; I think it was felt that this cut down on minority participation in cheerleader activities.

At the present time at the Grant High School we have a committee that is working on proposals to increase the informal associations of students in a homeroom situation, using some of the homeroom periods to have discussion more informally in dealing with the problems of students and their interests, something that is not always possible in the more formal classroom situation.

Recognizing that the needs of students within our system vary, we have established alternative programs. We have expanded alternative programs to meet these various needs.

We have also created the Orchard Park School which is for the girls who do not fit into a normal classroom situation, where there is indication that they would benefit more from other than a regular classroom situation.

[p. 14] Also we have created a program called "Focus" in the John Marshall and Star-Spencer High Schools, pilot program, again designed for students who would benefit more from a more informal, say, educational situation; that there are indications that maybe they are behind in some of their classwork, that they are not achieving at a sufficient level, or at their maximum potential in a regular classroom. They go to what is a school within a school, so that they do not have to worry about transportation to another school.

Also we have the Metro School, which is at the old Emerson Building at about 6th and Walker, which again is another alternative program in which students who for one reason or another do not function at their best in the regular classrooms situation can go to the Metro School.

And we have created his year the innovative high school at the old Central Building in downtown Oklahoma City, and again it is another program designed to meet the varied educational needs of students in the school system, and that school again was created with very definite student ratios, racial ratios, also balance as far as males and females go; and the same applies to the staff at the school. We are providing transportation. School opens in January. We will provide transportation to any student within the school district to come to the school, again getting around the possibility that some students be discouraged from coming to the school because they do not [p. 15] have transportation, recognizing that not all students have cars.

In the area again of the transportation, we have a transportation training officer now who helps train our

bus drivers in human relationships, discipline, safety, first aid, but again to improve the atmosphere on the buses within the District.

As far as the Board itself goes, I think that the attitude in the four years that I have been on the Board, I think I have seen it change considerably. The makeup of the Board itself has changed considerably.

Since the Court handed down its order I think early in February, maybe, in '72, there is only one member of the Board now who was on the Board back in January of '72; that this Board last December attended a Human Relations Seminar, went out of the District even, down to Seminole, to attend a Human Relations Seminar which would make us more sensitive to the problems within our District and to help us come forth with programs that would make other people within the District sensitive to the needs, to all the needs of the students.

And after coming back from that Seminar, we then adopted a policy, a human relations policy, and have established a committee to see that the policy is implemented within the District.

Q How long did that seminar last?

[p. 16] A Let's see. I believe we went down, seems to me like it was on a Sunday. It was for several days. It was an overnight affair, and there were top administrative people from the Central Office in addition to the Board members. The majority of the Board attended the meeting, the seminar.

The Board has created a Student Rights and Responsibilities Handbook Committee that draws up recommendations on policies dealing with discipline, attendance, and other matters which vitally concern students. The committee is comprised of students, teachers, administrators, parents. It is well represented by blacks and whites, male and female. The committee has functioned now – we have just created our thir [sic] committee, the third year we have created one of these committees.

Out of the first committee came our first systemwide Student Rights and Responsibilities Handbook, which was adopted by the Board, again setting out student rights, also the due process for students. The book was distributed to all students in the District.

Again this year when the committee made recommendations on revisions and the Board approved, the book has been distributed once again to the students within the District.

When we had some problems at Star-Spencer which appeared to be racial in nature, the Board took the initiative, created a committee of students, parents, teachers, administrators, to look into the problem. The committee studied it for a couple [p. 17] of months, made recommendations on this to promote unity and stabilize the enrollment at Star-Spencer, just as we have when the problem developed this year at U. S. Grant.

The Board again has had several meetings with the Biracial Committee in an attempt for each to understand the other's problems and also to understand from the Biracial Committee their sensitivity to some of the problems that maybe we are not aware of to arrive at, "Okay,

let's get a better understanding of things rather than just what's on the printed page."

Q When was the last time you had a meeting with them?

A As a matter of fact, last night was. We had one of these meetings. We set up another meeting in the month of December to meet with the Biracial Committee. We had an informal gathering at one of the Board member's home. I think it was back in the spring of this year. Again trying to, you know, learn how we could work together to improve the climate and the situation in our schools here.

The Board in the past year has been comprised of the situation of having a vacancy on the Board, and at that time the Board appointed a black member to the Board, the first time a black had ever been appointed to the Oklahoma City Board of Education, and she succeeded the first black member of the Board who was elected by the people of Oklahoma City and also re-elected. The black, Dr. Moon, is of course an educator, well-known, well-respected within the community, and he had been [p. 18] elected by the Board itself to the presidency of the Board which I think is quite an honor; and I think all of this really reflects an attitude of the Board that is for integration and is also for the education of all of the children within the school district, making sure that we treat all equally, recognizing that that is a very difficult task but that we are dedicated to that proposition.

MR. JOHNSON: Counsel may cross examine.

CROSS EXAMINATION

By Mr. Walker:

Q Is it Dr. English?

A No, sir, Mr.

Q What is your occupation, Mr. English?

A Reporter for United Press International.

Q And what is your education?

A My education?

Q Yes, sir.

A Okay. I have a B.A. from Oklahoma City University and I have done graduate work in journalism at the University of Oklahoma.

Q I see, The first point you seem to make is that this Board is different from the previous Board, is that correct?

A Yes, sir.

Q Explain how this Board differs from the previous Board.

A Okay. This would be my observation.

[p. 19] Q Yes, sir.

A Okay, and remembering that I did not serve on that Board in previous years.

Q Yes, sir.

A I look at some of the reading achievement scores from some of the schools within the District from the

past, prior to 1972, and I think that you can clearly see from those reading scores that those that what I would say were in the low income areas, and predominantly black schools, reading achievement levels were much lower than they were in your predominantly white schools; and it raised questions in my mind as to how much dedication there was to educate all the children within the District at the same level.

And I think that this Board has for one thing made reading achievement its number one priority. It has sought out federal monies to improve these achievement levels, to improve the ability of students to read.

We have set up alternative programs, greatly expanded alternative programs from previous years.

Q So that the first difference between this Board and the previous Board is that you feel that youall are more committed to delivering equal or quality education to all students.

A To all students, yes, sir.

Q Especially in reading.

A Yes, sir.

[p. 20] Q Now what are the other distinctions between this Board and the previous Board or Boards?

A Well, here again I have to go back to the Court's finding that the previous Board did not fulfill or carry out the cluster plan as it was designed, as it was presented to the Court.

I think that a Board that was dedicated to following the court order, as this one is, I think would have seen to

it that the cluster plan had been abided by whether they liked the plan or not. I think that is what this Board has done. I believe it has not agreed that this is the best way to go about solving our problems, but that it is a court order and we are seeing to it that it is carried out in good faith

Q Now then, in the event that federal monies are not continued for the reading program or other programs, have you devised fall-back alternatives to continue the same thrust?

A Well, we have not devised anything like that because we do have the federal monies at this time. If that comes, if federal monies are cut off, then I believe the Board is just as dedicated to try and provide the programs for all students.

Q I see. But you cannot commit, can you, to the Court that a year or two years from now the thrust which you have initiated will be continued in the event federal funds are reduced or discontinued?

A No, sir, this Board cannot commit another fiscal year Board.

[p. 21] Q Now when we make a distinction about this Board over against the last Board or previous Boards, where is the cutoff in time that we are talking about?

A Well, sir, i think that the big Board turnover that we had in the election in January of 1972 would be some indication. I think – I am trying to remember when we approved the reading as number one priority. I think it was in '73 that we went into the reading program.

Q So that as of 1973 the Board as it is now constituted was at least basically constituted in terms of a majority or a working majority for programs that are demonstrated by the reading program?

A I would say there has been an increased positive attitude on the part of the Board over the past four years.

Q All right. Now can you provide assurance – well, before I get into that – you cannot tell me, though, the date in which the new Board really came into being and the date that the old Board went out of existence, can you?

A No, sir, I cannot, because I think that it's a gradual change.

Q All right. Now you cannot tell me positively whether or not the thrust that youall project or initiate at this time will continue under a Board new to you at some foreseeable future date, can you?

A I cannot guarantee you that. I can go by that the people [p. 22] who serve on the Board are elected by the people of Oklahoma City, and this is the type of person they have been electing, a person who says, "Okay, we accept the court order as being a fact of life whether we like it or not. We are here to educate all the young people, and that's why we want to serve on the Board."

That's the kind of people they have been electing. I see nothing to change that attitude.

Q Presuming that the present Board is a good faith Board, and also assuming that the staff is a good faith staff, what assurances can you provide to the Court that

that will be the fact of life in Oklahoma City in one year or two years?

A I don't think anybody can really make that kind of an assurance to you outside the fact that if the Court relinquishes this jurisdiction, that anybody who wants to can come in and file a lawsuit and reopen the whole thing, and HEW will also be overseeing us and that is, with the federal monies involved certainly no one wants to see the money cut off.

Q Now you are aware that each Board which has come before the Court has indicated that it was a good faith Board, are you not?

A I am aware that that has been the statement in the past, yes, sir.

Q Now what is there about you as chairman or the Board as presently constituted that causes you, in your judgment, to be [p. 23] different from previous Boards in terms of your willingness to respond or unwillingness to respond to what you perceive to be the public will?

A Okay. If I may explain about the public will because I think there has been a change in attitude in the past four years in Oklahoma City. I think that the people of Oklahoma City have come to realize that desegregated schools are a fact of life and that there is no getting around it; and that not all people agree with the court plan, but I have seen, from the phone calls I have received over the four year period – I was on the Board shortly after this order came down when we first started in the Finger Plan, and there were plenty of phone calls and a great misunderstanding among people from people

who felt that you did not have to abide by a court order, that you could ignore a court order.

I think that now people have come to the understanding that you do have to abide by court orders and there is a law of the land and that segregated schools are a thing of the past.

So I think the will of the people has changed somewhat, the perceptions have changed.

Q Has the Board devised any techniques for being able to measure "the will of the people" insofar as it relates to further integration and desegregation of the schools?

A I know of nothing that we have done to measure this will of the people outside of the school board elections, that would [p. 24] measure the will of the people, but I am not sure that Board members necessarily always reflect the will of the people. It gets into the classic battle of, you know, are you simply a reflection of the people or are you leaders? And I think sometimes elected public officials have to take leadership even when it is not the popular thing to do.

Q Mr. English, are there any other problems that you can identify which are racial in the historic sense that remain within the school system?

A Within the system?

Q Yes.

A Well, okay. Here I would maybe broaden the question a little bit to the geographics of the whole thing of the housing patterns within Oklahoma City. I think

that is a hindrance to integration within the school system.

Q I am not dealing with the housing now. I am just dealing with the system itself. Are there any other vestiges of segregation and discrimination in your judgment which remain?

A I frankly cannot think of any.

Q Are you aware of the School District's policy on the recruiting of staff?

A Recruiting of staff?

Q Yes, sir.

A I am not really very much aware. I think probably the Superintendent would be better able to do that.

[p. 25] Q You cannot state whether or not, you cannot tell the Court that the historic vestiges of segregation or discrimination which existed in regard to recruitment either have been eliminated or will in the future be eliminated by positive Board declaration and action, can you; you can't say one way or another, can you?

A As I recall, we have indicated through the human relations policy and other policies of the Board that the Board's stand is one, one that we do not hire on the basis of, you know, racial discrimination and sex discrimination and other types of discrimination. That is our stand.

Q But in terms of having a stand and implementing a stand, you are talking about two different things, aren't you?

A Yes, sir.

Q Now are you familiar with the innovative high school?

A Yes, sir.

Q Did the Board devise any objective recruitment system for staffing the administrative echelons of that school?

A Okay. The Board in setting up the program at the innovative high school provided for certain racial balances within the staff and the student body of that school, and in the implementation of that, the director, the staff members, advisory committee, students, parents involved with that school have gone and recruited staff members.

Q I understand that, but isn't it true that the Board did [p. 26] not instruct its Superintendent to devise objective non-racial non-discriminatory recruiting methods, and that the result is the result that you have had with the filling of every new administrative vacancy that you had at the secondary level, that is to say that you have gone and recruited a white staff person to head the institution?

A I would not agree that we have recruited white staff people, exclusively white staff people.

Q Now you did have, did you not, some standards that the staff persons who would head the innovative high school would meet, isn't that correct?

A Yes, sir.

Q And you set out similar standards for the second person, didn't you?

A Yes, sir

Q You did not say that one of those two persons, in you policy statement, had to be black, did you?

A No, sir, we did not.

Q I see. So that your administrative staff was free, along with the advisory committee that you devised, to go and recruit whom they pleased without any directions or instructions other than not to be discriminatory with regard to race?

A I think that would be accurate.

Q Now are you aware that the first dozen or so people who were recruited to staff the so-called innovative school, that [p. 27] all of them were white?

A Well, I think that we had a problem in getting blacks, particularly black males, to agree to serve on the staff.

Q All right, but my point is that you do agree that the first dozen or so persons who were picked to staff that school were whit , [sic] is that correct?

A Again I don't know that I would say "picked". I am not, you know, I am not that close to exactly the procedure, except my understanding of the procedure is that there were some blacks who were selected who simply said, you know, "Thanks anyway."

Q All right, but the results, we start off either with results – that's the history of this litigation, results – the result has been that the first dozen or more staff persons selected were white, isn't that correct, for other than custodial type jobs?

A I would say that the first maybe eight or nine that I am aware that were hired.

Q All right.

A That were hired on were white.

Q Isn't it true that what you did was basically you got the nucleus of your staff in the first eight or nine people, you got you heads of departments if you had those things, and you had the persons who really run the school in that first eight or nine, didn't you?

[p. 28] A Well, my understanding of the structure of that school doesn't, is not that there are, you know, one or two or three or four or five administrative structures within that school. The director is there and then you have the facilitates within the school.

Q Now all of the facilitators initially hired were white, weren't they?

A I believe that's –

Q All right.

A Well, the first whatever, eight or nine.

Q Are you aware of the fact that Title 7 in the 1964 Civil Rights Act, which is the non-discrimination in employment Act, applies equally to school districts as it does to private employers?

A I am not aware of all the ins and outs.

Q Have you discussed the ramifications ever in your Board meetings of Title 7 to your employment pattern of practices?

A We have discussed employment practices and federal laws. As to whether Title 7 or whatever, or whether simply that we need to have more blacks, better racial balance within our staff, within administrative staffs, Central Office staff, as specifically to Title 7 I could not say.

Q Are you aware of the posting provisions of the non-discrimination law which say that if you have jobs as a public agency that they have to be posted and notice be given to the [p. 29] general community at the same time about the existence of opportunities, rather than allowing you to go and pick people whom you want to for no objective reasons to fill important jobs in your school system?

A I am aware that we do have to post job openings and that job openings in the Central Innovative High School were posted.

Q Where were they posted?

A My information is at least in the school.

Q All right. Now were they posted the in high schools before the vacancies were filled?

A That's my understanding, yes.

Q That's your understanding?

A Yes, sir.

Q Now has the Board taken this matter up as a Board in a public session?

A In a report on Central Innovative High School it was mentioned, but as far as Board discussion on this and

in a pre-meeting I had raised the question about whether jobs were posted and was informed that they were posted.

Q Now the second thing is, assuming that they were posted, and you did not get a pool of black applicants, did you seek to devise additional measures or methods for obtaining a sufficient pool of black applicants, comparable to the pool of white applicants?

A The Board itself sets policy, and it is the job of the [p. 30] Superintendent to carry out policies, so I think he would be better qualified to answer that.

Q Now after you dealt with your pool, did you establish objective criteria for the selection of personnel to fill each of those positions within the so-called Innovative High School?

A I think again this is getting into more of an administrative matter. Job description and this type of thing are what is done by the administration.

Q The Innovative High School has been one of the things that you and this new Board have projected as a manifestation of your changed intention, isn't that correct?

A That's right.

Q But you did not as a Board see fit to devise objective qualifications for each of those jobs, did you?

A As a Board we – I can't think of any job that we have set up, any job description outside of Superintendent, and only that this year.

Q Did you set up any objective criteria for promoting, demoting or terminating personnel who may have been assigned to that particular school?

A No, the Board has not set up.

Q Now the Board proposes, does it not, to spend more money per student for each student within the Innovative School than it does for each pupil in the other high schools, isn't that correct?

[p. 31] A Within your regular high schools?

Q Yes, within your regular high schools.

A The other alternative programs, we have some that are – well, most of our other alternative programs are more expensive per pupil.

Q What is the projected per pupil expenditure for each student within that high school?

A Well, I don't know that anybody has set down a specific figure. I have done some figuring on figuring of faculty, staff and utility costs, and compared that with some others.

Q Could we not say that what you intend to do with the school, though, sort of suggest, per pupil expenditure, you plan to have lower pupil-teacher ratios, do you not?

A Than you regular high school.

Q Than the regular high school; and you plan to offer whatever programs are in demand in addition to those that are decided upon by the school staff, is that correct?

A I think that would be.

Q And the number of pupils who will constitute a particular class will be much less, perhaps, or possibly than in regular classes?

A It could.

Q So that the per pupil expenditure may be anywhere from two to three times as much as within a regular high school, isn't that correct?

[p. 32] A I would say that on the outside it could be twice as much.

Q All right.

A I don't think so but it could be, the first year.

Q Are you aware of the Oklahoma law, not the federal law that deals with the Fourteenth Amendment equal protection of the laws, but the Oklahoma law which provides for equal protection, treating all students, all people under state law more or less equal in terms of benefits that the State affords?

A I had not had that recalled to me, but you now remind me.

Q Now isn't it a discrimination to some students when you do not allow them the same benefits that you allow to other students?

A All the students within the high schools of Oklahoma City are eligible to apply, and have the same opportunity and the same chance, because it will be a lottery selection to attend this school.

Q But the point is that what you are doing is saying that you are going to give more governmental benefits to some students, and we are going to limit the number and we are going to deny those benefits to the large majority of students by definition by limiting the size of that school to two or three hundred students, isn't that correct?

A I would say that with any alternative program, whether it's Washington Center, Orchard Park, the Vo-Tech schools, certainly would be – that's probably the most expensive program [p. 33] per student that we have in the system, and if we went by flat level we would not be able to educate the students of low income background, we would not be able to spend more money on them, which I believe we do now, than we do for some youngster who comes from a very well-to-do family.

Q All right, but that Vo-Tech example you mentioned is a subsidized federal situation to a great extent, isn't it; vocational education is subsidized by the federal government?

A As I recall, we get fifty percent reimbursement – I don't remember whether it's all from federal or not.

Q And your new program is going to be wholly or almost wholly going to be funded by local school district funds, isn't that correct?

A It will be financed here wholly.

Q And when we state talking about your good faith, I ask you with regard to the classroom situation, do you still allow the result of segregated classes within the so-called integrated school?

A Well, I look at what the Biracial Committee reported in its latest report saying that – if I could quote from the, could I refer to –

Q That report is not necessarily evidence but I think what we are dealing with are facts at this time.

A Okay. It will vary from class to class as to whether you have mixed seating or not. As I recall from again reading that [p. 34] report saying that where it's left up to say freedom of choice within a classroom there that people who ride the bus together tend to sit together.

Q All right, but you allow freedom of choice for class assignments?

A It varies from school to school, from class to class. Some teachers will assign seats, other teachers will let it be. Gym class, you know gym class you can't assign seats.

Q But your policy does operate, or the lack of policy does operate to permit in-class segregation, doesn't it?

A In some situations students are permitted.

Q Has the Board developed a policy for dealing with that branch, in my judgment, or the root of segregation?

A We have no policy that I am aware of, that speaks specifically to that.

Q Now you do have some all white classes and all black classes in your high schools, in your junior high and middle schools, don't you?

A I believe that is indicated in some of them.

Q And you have indicated that one of your concerns has been to make sure that blacks get the same access to education that whites have, is that correct?

A Yes, sir.

Q Now isn't it true that at this time they do not have the same access to education that whites have?

[p. 35] A No, I believe that they have the same access.

Q Well, if you believe that they have it now, did they have it four years ago when you had that bad Board?

A That they had the same access?

Q Yes, sir.

A Well, yes, it depends on your definition – if you go back – okay, we were in school at that time if you say that it's all black or all white, it's not a quality equal education, I guess.

Q We are talking about segregated classes now.

A Okay.

Q Within the integrated schools. But the schools that you want us, want the Court to leave alone, now you do concede that you still have segregated classes, don't you?

A I would say if the class is segregated that it is by choice of the student, that if they want to take a class they can take it; also in some cases of course where students are assigned to a particular educational program, a special educational program or something of that nature,

then according to an educational need, a provable educational need, it may result that way.

Q All right, so that you have blacks disproportionately found in Special Education, don't you?

A Disproportionate to their percentage within the School District?

[p. 36] Q Yes, sir.

A I believe my recollection is that –

Q (Interposing) And you have whites disproportionately found in academic courses at high school level, don't you?

A I really haven't studied that.

Q Now if you are going to come to court and ask him to divest of jurisdiction, I suggest that you look at your report to the Court, which was submitted after November 1, 1975.

I call your attention to the John Marshall High School, beginning with page 1 of that exhibit.

While you are looking for that, you suggest that basically blacks haven't been taught to read to the same extent that whites have within the school system, is that correct?

A I think in the past.

Q And the same would hold true – when you said "read" you weren't really limiting it to reading, were you, you were talking about adding – they weren't educated to the same extent the whites were, isn't that correct?

A That's my opinion.

Q All right. Now if you look at the Marshall High School – I suggest that you deal with my questions with that view in mind – look to that page 1 and explain to me and to the Court with regard to grammar and vocational REV, whatever that means, how in one class you could have one black and 33 whites, and in another one, three blacks and 27 whites, and yet another, [p. 37] ten blacks and 28 whites, the point being that even if you don't have but fourteen blacks, why aren't they more dispersed in those three classes, rather than having only one in one class and the great bulk of the blacks in one class?

I know you can't explain that particular case. I want you to look at that and go to the next page. We are talking about pattern. Page 3. We look at Ancient History. We see 18 whites, no blacks. We look at Anthropology, a college oriented course, 24 whites and one black.

Experimental Psychology, 20 whites, no blacks.

On to the next page, Chemistry 38 whites, no blacks. In the whole Chemistry line, basically a handful of blacks and a large number of whites.

Trigonometry, one black out of 54 whites; and then on page 5, Algebra, one class, Elementary Algebra, 14 blacks, 23 whites. The other Elementary Algebra class, zero blacks, 17 whites.

Now how do you explain these patterns that in a few cases where blacks do take difficult academic courses they seem to be lumped together or they seem to be totally segregated; how do you explain that pattern in John Marshall?

A I really don't know. I can think of some reasons that are possibilities, but as far as a definite answer to it, again all theses programs are of course open to the students if they want to sign up, but again to your thinking where there is zero in [p. 38] one and fourteen in another, I know that the computer gets into making out schedules. There are differences in student scheduling. I don't know what time Elementary 1-A, you know –

Q All right. Now the counselor also has a role within each school in encouraging or influencing a class, the grouping of particular students, is that correct?

A The counselor does counsel with the student about what classes.

Q You also have the concept still working in your school of ability grouping, don't you?

A I believe that's –

Q All right, now if your statement is true that blacks historically, at least through this bad Board, were denied equal education, how then can you use a concept of ability grouping for school assignment?

A I wouldn't say exactly ability grouping. I think the Superintendent can respond to this question on that part a little better than I can. He knows more the ins and outs of it. I know educational programs sometimes depend, you know, you are trying to reach the – to the best for the students that you can.

Q We are not concerned at this point, in my judgment, with the good faith of Dr. Smith. We are concerned with the good faith of the Board and the knowledge that the Board has about the school system and whether or

not the knowledge is suffi [p. 39] cient for it to really in good faith represent to the Court that it knows enough about the school system and is committed enough to prevent segregation and discrimination from recurring.

Now look to the next page, 7, and explain to me how there are so few blacks in your foreign languages and why after the first year there are no blacks in your foreign languages at Marshall, only whites.

A I do not know the answer to that.

Q Now look and see whether or not there is not a pattern with regard to all of the academic courses that are regarded as difficult, Chemistry, Math, Science, Biology, except for Basic Math, Basic Biology, things like that – and tell me what you as a Board member and also as Board president would do to bring the black interest at least and black ability to be assigned to these particular courses on some kind of a distributional basis up to equality, and also t ll us when we may expect that if we ever may.

A Well, I think that we expect the Superintendent and the administrative staff to do what they think is best about providing the best educational program for each individual student; and we set out the broad policies. We set out the broad policies for the Superintendent and then periodically we are to evaluate the Superintendent, the job the schools are doing, and seeing that they are achieving, and among them course edu [p. 40] cational achievement, racial balances within staff, within schools. That's all part of the evaluation. If the Superintendent doesn't do it then you make a change.

Q Now were you aware before I recited those instances of disparity that they were as I have suggested they are?

A I was aware of some of the disparities here, as you call them, but I really take that the Superintendent, knowing him, that he has seen to it that our policy is implemented in good faith and that there is a good educational reason for what is on the sheet.

Q Now is that the result that youall desire, that I just explained to you?

A The result that we desire is that the best education be provided for the individual student based on his needs and, you know, if it means that there are going to be twelve students, twelve black students in Latin 2 or 4, Latin 4 – well, I'm sorry, there aren't any.

Q Okay.

A If it means you are not going to have 20% or 30% blacks in each class within a school system or within a school, that is all right with me if it means that the child is being educated to the maximum of his potential.

Q What is the difference then between your position that you just stated and the previous Board's position, because the previous Board took the position that they were educating each [p. 41] child to the maximum of his potential.

A Okay. I think the proof will be in the pudding and that is I don't think that you can say that this is a measure of education, that because we have two students, black students in Latin 1, that we are not educating all the students in the District equally.

Q I was just using those as an example, Mr. English. I think that we can go back. I haven't made a survey but I think we can look at Southeast School and let's see if we find the same pattern. Southeast is on behind Marshall School.

All right, look at Algebra 1, the class of Delmar Boyle is on page 2. He's got 11 blacks and 33 whites, but the next class is 5 blacks, 23 whites, and the next 6 and 29, and the next 3 and 29, and again the same pattern, isn't it?

Geometry, no blacks, 17 whites; 1 black, 27 whites. You look at Great Books, 2 blacks, 14 whites. You look at Advanced Composition, 1 black, 27 whites. All of the tough courses, "tough" courses, are disproportionately white.

If you look at the easy courses, Basic Math, let's say General Math, 13 blacks, 16 whites. That is under Mrs. Flynn. Look at General Math under Mr. McElwee, 13 blacks, 13 whites.

Look at some of the other courses. Problems of Democracy, 13 blacks, 24 whites. You look at Black History, 15 blacks, no whites.

Now you and I both know that the pattern that exists in [p. 42] Marshall, isn't this correct, are the same patterns that are in the system as a whole, that blacks are special education and the basic courses and the vocational courses, and your counseling program does nothing to really get them out of it in an effective way, or at least to the extent where there will be some foreseeable

date in the future blacks going on in college preparatory courses in more or less the same numbers as white?

A I would say from looking at statistics you cannot tell what is behind those statistics.

Q That's right, and youall haven't looked, as a Board, to handle those statistics, even though you had these various statistics for four years, isn't that correct?

A I think we instruct our Superintendent to see to it that the educational program is devised and implemented to provide for the educational needs of each student regardless of race or sex.

Q All right, let's deal with the question of school suspensions. Now can you tell the Court that black children are more or less a disciplinary problem than white children?

A I think the record indicates that more blacks are suspended than white students.

Q The question, though, is not that. Can you say to the Court that basically and inherently blacks within a school system are inherently more of a discipline problem than whites?

A I cannot really say that.

[p. 43] Q All right.

A I know we have discipline problems that may involve both blacks and whites.

Q You had discipline problems, you had discipline problems when the schools were segregated, didn't you?

A As far as I know, we have had discipline problems as long as we have had schools.

Q All right.

A And we will continue.

Q Did you go to high school here?

A No.

Q I see. Where did you go to high school?

A Ada.

Q Ada. All right. Do you recall ever being in a fight in high school yourself?

A Not in school.

Q Not in school but after?

A After school, okay.

Q Okay. Did you get expelled for that fight?

A No, sir.

Q Do you recall ever doing a finger sign to another student in the presence of or maybe behind the back of a teacher – not you, but somebody else?

A I would say that back when I was in school, the finger sign was not all that popular. In fact I don't think I even [p. 44] knew until it was some show that that first came along.

Q The point I am making, the conduct that youall engaged in, or we engaged in – we are in basically the same generation, I guess – was no different than the

conduct that is now being engaged in, isn't that correct, white on white or black on white?

A We had our discipline problems back then.

Q But you didn't expel for long periods because of minor fights or because of a few words here and there, did you, or at least the school system didn't? Because you had no administrative role in the system at that time.

A To tell the truth, I don't really remember. I think probably those kids were rather pushed out rather than expelled.

Q That's another way of dealing with it. You ignore people who have a tendency to perhaps have problems, after a while they get the message and they leave, isn't that correct, isn't that what Oklahoma City is doing now?

Let me get into that differently.

With regard to your record of suspension, I show you what is marked Plaintiff's Exhibit 1 for identification.

MR. WALKER: Mr. Johnson, this is the suspension document, John Marshall High School. 8/29/74-3/1/75.

Q (By Mr. Walker) I ask you if you have ever seen this document before?

A It looks quite similar to some of the reports I have seen.

[p. 45] Q And I should like to have identified along with that all as a part of this same exhibit, because they relate to the same subject, some data or type data for

Northeast High School, Central Middle School, Grant High School and Douglass High School.

Can you identify these as being similar documents, presented by your administrative staff?

A These certainly look like the documents.

MR. WALKER: Mr. Johnson, I show them to you.

Q (By Mr. Walker) Now at each of these schools, isn't it true, each of these schools is majority white, isn't it?

A Yes, sir, all of them.

Q And at Marshall during that short period of time, eleven out of twelve students suspended were black, is that correct?

A That's what this shows.

Q Thirteen out of fifteen in Northeast High School were black and one was an Indian, is that correct?

A That's indicated here.

Q Central Middle School, eleven out of twelve were black?

A Okay.

Q U.S. Grant High School, all six were black, and Douglass High School, all eight were black.

How can you represent to the Court in good faith that no white students during that period of time, or at least no more than enumerated during that period of

time, engaged in conduct [p. 46] which would be by analogy similar to that that the blacks engaged in, at least to the extent which would warrant suspension or expulsion?

A The best I can figure from this, apparently the principals did not find anyone who had committed these offenses that were white.

Q Now the point is, is there anything to cause you to believe that white children are any better now than when you and I were coming up?

A I think kids are most alike, white and black.

Q You have had occasion to discuss and consider the question of suspensions, haven't you?

A Yes, sir.

Q And you are aware that this was the pattern in '73-'75, '73, '74, '73 and '72, the pattern of disproportionate suspension was there, wasn't it?

A Yes, sir.

MR. WALKER: Now I should like to have these documents introduced as Plaintiff's Exhibit 1, your Honor.

THE COURT: Very well.

MR. JOHNSON: No objection.

THE COURT: Clip them all together. Be one exhibit?

MR. WALKER: Yes, your Honor.

THE COURT: Let the record show the exhibit is received in evidence.

(Plaintiff's Exhibit 1, being document re suspensions, was received in evidence.)

[p. 47] Q (By Mr. Walker) Are you advised that there has been any changes in the numbers of students who have been suspended this school year in comparison with previous school years?

A I really can't recall about this.

Q Isn't it true that you received reports from Dr. Smith or from some other authority figure within the school indicating that suspensions in the first two months of this year are * * * down, black and white?

A Seems to me that I have read that some place, either in some of the information we have received about the Focus program or some of the other alternative programs. I read that some place, yes.

Q Now youall have had occasion, have you not, to revise your school rules and regulations, isn't that correct?

A Yes, sir.

Q You have given instructions – you don't know whether they have been carried out or not – but you have given instructions to have those revisions disseminated widely to the students and to the family members, haven't you?

A That's correct. We have been informed upon questions by the Board that they have now been distributed.

Q So that during '74-'75 you did not have any formal, well-established due process procedure, but now you have some, is that correct?

A No, sir, '74-'75 would be the past school year, yes, sir, [p. 48] we had the same type of, we had a handbook that came out in something like August of '74 that was distributed, and it had a due process in it.

Q All right, but you have revised the due process to make it more specific in the last six months, haven't you?

A We have revised it. I wouldn't say more specific; we have just changed some of the procedures in it.

Q Okay. And you have not had an opportunity to evaluate, have you, the effect or effectiveness of those changed procedures, have you, with regard to student suspension by race?

A That's correct. We have not.

Q Now if in the past your suspensions were disproportionately racial, have you sought to try to identify the causes of the disproportion and to take steps to minimize in element of possible racism in the suspensions themselves or the expulsions themselves?

A Well, the changes that have been made this year – I wouldn't say that there was racism in the past.

Q I understand that.

A Okay. I would just say that there are some different procedures this year in the makeup. One, a student who is accused of a serious offense, who faces possible lengthy suspension, there is now provided for if the

student requests it, a committee that is comprised of students and teachers and an administrator who will sit as a jury in effect and hear the evi- [p. 49] dence in the case and make a recommendation to the principal. It's not a binding recommendation to the principal.

Then if the student is suspended, then there is an appeal process. The first step in that process at the high school level is to the director of High Schools and we have a new Director of High Schools who is a black; and then beyond that, we have an appeal panel, and finally, if the student wishes, they can carry the appeal to the Board.

Q Now at this point it is too early to tell whether or not that system is going to work, isn't it?

A That's correct.

Q Now let's look at some other areas in your school system. You did indicate that youall identified extracurriculalor [sic] activities participation as a problem, didn't you?

A I did identify that was a problem.

Q Is that problem one where black girls basically have not been participating proportionately to the same extent or level as white girls?

A Looking at cheerleaders, pep clubs?

Q Yes.

A This type of thing?

Q That kind of thing.

A Yes.

Q New you have indicated that one of the possible reasons or factors that youall identified as a factor is cost, is that [p. 50] correct?

A In the cheerleader part of it, yes.

Q And the pep part of it; and that in order to participate in those things, you have to be, historically, you have to be able to go to some kind of a clinic or school for a week or two and that calls for money?

A Correct.

Q All right. And in your system you are aware that percentagewise blacks, the state of blacks, they don't have the same kind of economic ability as do the whites?

A Right.

Q Now that is just one problem you identified. Did you deal with the problem of who pays for the costs of uniforms and the cost of admissions to games, or the other things that go along with performing those kinds of roles and those activities?

A I don't think we as a Board have taken an action on this we have discussed, you know, there is a problem in here and some of the different aspects of it, instructing staff to work on the problem to try to come up with it. I understand one school has done, really, away with the pep club uniforms as such, goes to wearing scarves, very inexpensive scarf which is a very good way. They identify well with that.

One school has done it, and at least one other school has a planned program whereby blacks and whites do

participate to more or less the same extent in extracurricular activities; [p. 51] that's Northeast, isn't that correct?

A Well, at least Northeast.

Q At least Northeast, but most of them don't even today, isn't that correct?

A That's why we have appointed a Communications Specialist.

Q Can you tell the Court when you are going to make possible equal opportunities in your extracurricular activities for black girls?

A I believe we provide equal opportunity at this time. I think that there are other problems that we are working on. That's why we have a Communications Specialist. That's why we provide the activity buses after school. I think that certainly we don't have all the problems in our school system worked out.

Q All right, you do recognize cost is a factor especially if the youngsters have to pay for their own uniforms, isn't that correct, and some of those schools at the junior and senior high school level require a cost of anywhere from $50 to $200 for uniforms, because they require several uniforms, don't they, of a certain specific kind?

A The Board has had discussions on this and I can't say that they have specific uniforms or what.

Q But you do know that some schools require as many as three or four uniforms, don't you?

A I have heard that there are some schools but I don't know if it's our schools or not.

[p. 52] Q Now are you aware of that fact that you provide the male athletes all of their costs and that you don't do the same kind of thing for the girls, and that this possibly smacks of segregation; did you discuss that as it relates to the integration problem?

A Okay. I think that we pay for the expenses of the girl athletes. Okay, as far as athletes go.

Q But you don't really have an athletic program for girls on an intraschool basis to the extent that it costs money or produces money like the boys athletic program?

A We don't have any football program for girls.

Q Do you know if you have an intraschool basketball program?

A Yes, we do have.

Q A basketball program at all levels?

A At all levels?

Q Yes, sir.

A We have competition between the various schools in girls basketball. It's not blown up like boys basketball is emphasised [sic], you know.

Q But the point is that you pay for the boys to go and be gladiators in a football arena, or a basketball arena, but you don't pay for the girls, to be their supporters – I am not using this whether it's right or wrong – but you don't do it, do you?

A I really don't know the extent which we finance.

[p. 53] Q Now you are aware that in a lot of your other clubs and activities that they still manifest the same kind of exclusion for blacks, isn't that correct?

A There are some clubs which do not have a proportionate –

Q You are also aware of the fact that some of your programs, may be they are informal but maybe the coach also participates, are conducted at the exclusive area of private clubs, like tennis or golf, isn't that correct?

A Well, I'd have to check the figures on it.

Q You do know that's a fact, don't you, Mr. English?

A Well, I know that you don't have very many minorities participating in golf and tennis.

Q You do use private clubs for those functions to some extent?

A Private clubs for the golf matches or something?

Q Yes.

A I really haven't looked into that, to tell you the truth. Golf is not one of my strong points.

Q Well, with regard to transportation, can you say that the burden of transportation are equal on black and white students or do they fall more heavily upon one group than the other?

A Well, as Dr. Finger pointed out in his statement to the Court here when the Finger Plan was presented, that

the burden was, the transportation burden was heavier on blacks than on whites.

[p. 54] Q All right, that was percentagewise but not numerically. He made the point, do you recall, that if 20% of the students were black, that 40% of the students transported would be black, they would do it twice; but that basically the number of pupils within a slight variation would be equal by race, equal number of blacks and an equal number of whites – it would be a smaller percentage of whites because they have more numbers in population.

Now can you say at this time that for integration purposes as many whites are transported as blacks?

A The changes that have been made and all approved by the Court –

Q The changes that have been made? Let's deal with that for a moment because I don't know of any changes that have been made with Court approval with regard to changing the burden, the busing burden by the Court. I don't think the Court dealt with the question of burden of transportation yet.

A Well, in the first change of students, which as I recall involved Grant High School, we had to increase the percentage of blacks at Grant and as I recall we took some more students from may be Kerr Village and bused them to Grant, and that was the solution. At that time the Court, I think it was at that time, maybe it was a year later that the Court said that the burden could not be borne by the blacks in the future on this and then it was

the next year that we changed the racial balance [p. 55] of some of the schools.

As I recall the burden was either equal in changing or there were more whites. That's my recollection of the way it was.

Q Can you say now that as many whites are being transported for desegregation purposes as blacks?

A I really haven't counted up to see? I really don't have the figures on that.

Q Can you commit to the Court that two years from now that as many whites will be transported for desegregation purposes as blacks?

A I can't commit to the Court.

Q Now with regard to school closings, I notice that youall have applied for and received Court approval for some school closings and obviously the plaintiff did not object, the Biracial Committee did not object at that time; but I also noticed in yesterday's paper that youall had an auction of surplus school properties yesterday.

Were you aware of the fact that the Court told you at one time or another that you could not dispose of school property or at least school buildings that had formerly been used for educational purposes without prior Court approval?

A Okay. Let me explain to you. Yes – all right, I am aware.

Q I'll get into that. Did youall seek Court approval before [p. 56] you made this offer to the public at large

and arranged this auction, which was held on yesterday, according to the newspaper?

Did you get a court approval? Now I don't know.

A The Board has not voted to sell any property.

Q Well, who is authorized to offer for sale and release such offer for sale to the press and school buildings which have been one of the focal points in this litigation?

A Okay. I think it's a procedural matter as to whether the egg is before the chicken. We go out and if we find some buyer that is willing to buy and pay the price, then we go to the Court, would be my opinion, that we would go to the Court and say, "All right," you know, "do you approve the sale of this property or to this whatever?"

I think it might make a difference to the Court as to who we were selling property to. If we were going to sell property to a private school, I think the Court might look on it differently than if we were going to sell it to a CAP program.

Q But now are you aware of the necessity to get prior court approval before contracting to dispose of property?

A I think we have not contracted to dispose of property.

Q Well, you did, did you not, make an offer – and I won't argue with Mr. English. I apologize if I seem to be.

Will you state to the Court what you did on yesterday?

A Well, if I can back up just a little bit?

[p. 57] Q All right.

A And explain that – all right, we have about twenty-two pieces of property that are either just barren land we have to keep moving or a vacant building, or buildings that were formerly school buildings that are now in housing programs such as CAP, Neighbor to Neighbor, other community programs; and the Board and the administration have proposed that we investigate the possibility of selling this property, notifying those people who are the occupants of the land or the buildings of that time of our intentions.

And so yesterday, having done this within the past couple of weeks or the past month anyway, okay, we did solicit proposals or bids on at least one piece of property that I can think of right off, the old Carey Building which is at Southwest 29th and about Portland.

There were several people interested in that. The Board heard the people last evening, voted not to sell any of the property that is now occupied, and of course at all times the Board was well aware as we have always been that we cannot dispose of property without the Court's prior approval, and that when we took, when we made the solicitation of bids that, first off, that didn't mean that we would sell to the highest bidder because if that bid were not high enough, for one thing, we would not even consider it going on to the Court – with the request that it had to be a good bid and then "You decide really [p. 58] whether you want to sell the property or not." So far it has all been a preliminary move.

Q Did you make an offer to the people in the community at large about the availability of the building, did you disclose that rather these buildings were on the market, that you were inviting bids?

A The Board discussion was that we would offer these properties or solicit a proposal from the group that was in the building at the time, okay, and see if they were interested, if there was anybody else interested in it.

As I recall there was some discussion about putting a sign out by the property to say, you know, "This property is for sale", but as far as advertising in the papers or something of that nature, the Board did not do that; and in the discussion with the Superintendent last evening, he has indicated that in the future probably we will advertise, not in the Law Journal, the very exclusive Law Journal, but instead in newspapers of general circulation.

Q But there was some limited advertisement, wasn't there?

A There was publicity on it certainly.

Q Did you in your publicity ever disclose that the bids that would be made by these persons, some of which would be costly to those persons who were bidding, would be subject to Court approval in the desegregation case?

A I really don't remember that it's in there. There is some [p. 59] general statement that says, you know, that just because you are bidding doesn't necessarily mean you are getting it. That's my recollection of what that says.

Q Could you tell the Court what else you plan to do to eliminate the rest of the segregation and discrimination that remains within the school system which you have already discussed and described?

A Well, I think we will continue the efforts that we have. Where we see problems arise, where we see needs, hopefully before the problems become all that evident that we will continue to divert manpower into those areas.

Q Are there areas where you feel that you should divert or devote manpower now?

A Well, truthfully, my feeling is that one, we need a much stronger human relations program.

Q You still have needs of a desegregation nature that remain in this system; we cannot be assured that six months from now you will be Board president, or that this same Board will have the same attitude it has before the Court today, can you?

A We are not in Utopia yet, no, sir.

MR. WALKER: Thank you.

THE COURT: Mr. Johnson?

REDIRECT EXAMINATION

By Mr. Johnson:

Q Mr. English, referring to the innovative school, I believe [p. 60] the faculty, there are now nine on the faculty at the innovative high school, is that correct?

A I believe that is correct.

Q How many of those are black?

A May I refer to notes on that? My recollection is there are two blacks – let me back up a minute here. I think maybe there have been eleven staff people now designated for that school and awaiting for enrollment, the enrollment process or the lottery is this Thursday night, and then see if they have the 220 students.

Q Wasn't it stated at last night's Board meeting that there were nine and that two of those were black?

A That's my recollection. There was some discussion also of eleven being designated now.

Q Eventually?

A Yes.

Q Now on your courses that are offered in the course of study in the high school, is it correct there are two types, one is elective and the other, required courses?

A Yes, sir, that's correct.

Q Counsel mentioned several courses as not having very many blacks, Trigonometry and Chemistry – those are what are called elective courses, is that correct?

A Yes, sir, that is correct.

A And those are not compulsory and it's up to the individual [p. 61] students as to which of those that he does elect?

A That is correct. The student has his choice.

Q Has the District had any policy of doing any more than suggesting that they take any of these courses,

these elective courses; in other words, do you know whether there has been any policy to encourage the taking of particular elective courses by students?

A I really don't call it policy. We have made some changes in the Chemistry – well, the Science courses this year, in hopes of attracting more students into Science courses.

Q Now on the subject of suspensions, who makes the initial decision on a suspension from school?

A Well, as I understand Oklahoma Law, really the principal of the person whose decision it is to suspend students from school.

Q I believe you did testify that you attempted to have due process safeguards on suspensions?

A We have worked diligently on that. If I could go back to the previous question, I might also point out that at John Marshall High School where counsel pointed out that there were a number of black students and not very many white students who were suspended from school, the principal at John Marshall High School is a black.

Q Now there is a process where an appeal can be made to the Board of Education eventually from any of these suspensions?

[p. 62] A Yes, sir.

Q Can you tell within the last year approximately how many of these students that have been suspended have actually appealed eventually to the Board of Education; I will ask you if it is not just relatively few?

A It is very few. I can only think of one case where we had a student come before the Board appealing.

Q But that remedy has been available at all times?

A Yes, sir, it has.

Q Now referring to the sale of property, did I understand you to testify that you were just asking for bids, were not offering to sell the property?

A That's correct.

Q In an attempt to find out what price for it would be available if you decided to sell it?

A Yes, sir, there was no guarantee that we could sell the property.

MR. JOHNSON: I believe that's all.

MR. WALKER: Just one or two other questions, your Honor.

THE COURT: Yes.

RECROSS EXAMINATION

By Mr. Walker:

Q We have a number of elective courses in Marshall and the other high schools and in the junior high schools. Now has the [p. 63] Board formulated a policy as to why those courses are elective or just which courses will be elective; what is the rationale for having any electives?

A Okay. There are certain requirements by state law as to what courses a student has to have. As to why we have elective courses?

Q Yes, sir.

A Again I think it's to meet the needs of the students, whatever those needs are, and that is, if I may continue a little bit, one of the ways we determine what courses are offered as far as electives go, my understanding is that at the first, or during the school year before the schedule is made up for the next year, the students are given an opportunity to express in writing what courses they are interested in having for the coming year, and then you draw up your schedules and send out this information to the students, permitting them to sign up for courses.

Then it goes into the big computer and out it comes.

Q All right, but you don't know what standard you use for even having electives other than student choice, do you?

A No, I really – in the past the Board has left curriculum to the Administration.

Q I see, and you have no way for determining the relatedness of that to the purposes of education generally, do you?

A The Board at this time has the motion which is a statement [p. 64] of purposes for the School District upon which we will build these other things as to whether a subject – you know, it is unfortunate that we don't have already a statement of purposes. We have had a management study and this is one of the things they said, the first thing you need to do is find out what you are about.

Q Then the question really is that you don't know what you are all about in terms of the education that you

are offering to your children, isn't that correct, outside the required courses?

A I wouldn't, I wouldn't say that really.

Q But that's what the management study has told you, isn't it?

A It says that there is no written statement of purposes. Obviously we work from some agenda.

Q What is it?

A Whether it is written or not.

Q What is it?

A I think that we'd have to say it's a very broad based term of, you know, quality education, meeting the maximum potential of the students, providing equal education for all the students in the system.

Q Let's look at what that does, when you start talking about adding electives to the students, you are talking about economy in operating the school, aren't you, you are talking about [p. 65] maximizing the value of the dollars, you are talking about trying to achieve some social purposes by affording students an opportunity to have certain education; right?

All right, what is the economy of allowing one teacher, Mrs. Marian Swindle at Marshall High School, the privilege of having twenty-five students in English 1 through 3 over a six hour period?

Now what is the economy in that, six classes, twenty-five students for one teacher?

Let me give you another example which may be a little bit easier to relate to.

What is the economy of offering a full class for Latin 3 when you only have five students in it? Are there educational benefits to all of the students in the community?

A Okay. I don't think economy is what we operate for.

Q Well, my point though to you is, do you not see some racial pattern here? I am not saying that you happen to be economical or wise in your decision-making – you could be silly or what-have-you, I'm not saying that either – but as far as racial discrimination is concerned, can you see the pattern where you let white students or at least have elective courses which are attended basically by white students, all of which have a much lower teacher-pupil ratio than do the basic courses; is not that the same kind of thing that you are doing with the specialized high school?

[p. 66] A My understanding is that we in some classes of a basic nature provide a lower pupil-teacher ratio than in other courses, in addition to those, you know, in advanced.

Q All right, let's look at Marshall, and I want you to bear in mind the electives over against the basics. German 4, one teacher, one student to one teacher. That's Beverly Mills.

German 3, one class, three students to one teacher. Those of course are white students.

You go throughout this and you see a whole batch of examples of one and two students in a class, all whites.

A Well, if I may, and I don't know this, but here's another course of Vocational Auto Mechanics 2, whatever that is. There's a class with three students and one of them is black. I assume that there's a good educational reason why we had three students in Advanced, or Advanced Auto Mechanics.

Q I understand you assume that you have good reason. I will accept that. But you don't know what that good reason is. Okay.

Now can you commit to the Court – first of all, you do know, we were talking about on direct and on redirect some of the staff again – you are aware, aren't you, that in your specialty staffing that you still have patterns of racism, racial discrimination, that is to say you have a disproportionate number of coaches, football perhaps at the black schools, formerly black schools, who are black, and throughout the system [p. 67] you don't have the same kinds of proportions of blacks in coaching at the high school and junior high school level, head coaching; you are aware that in the bands, choir, other places like that, specialty jobs, blacks do not have their percentages as they have within the school system as a whole, are you not?

In other words, what I am saying is that youall have got your quotas but the blacks are basically structured into a narrow line while the full range of opportunities is open to whites in terms of superintendent jobs, in terms of principals of the new schools, preferential coaching positions; isn't that correct, sir?

A I don't know that I could go with all that statement there that way.

Q But you could say that that is substantially correct by your observation as Board chairman, isn't that correct?

A I would say that the statistics are there and I am not going to argue with statistics. The reason behind the statistics, I think that the Administration can probably help you out.

Q Can you commit to the Court that you at least will establish an objective and work toward that objective immediately and into the future, whereby all of your specialty programs will be staffed in more or less the same kind of numbers up and down the ladder, as the blacks and whites happen to fall in terms of their numbers in the school system as a whole?

A I think that the Board endorses that concept.

[p. 68] Q But have you done anything, can you say to the Court that you are going to deal with that and make your administrative staff implement it?

A I think as vacancies occur that this is being done.

Q All right, but I am not talking about today. Can you commit to the Court that if it is not happening that you will see to it, without court jurisdiction, that it does happen?

A We have that commitment.

Q You now so commit to the Court?

A We have expressed these same feelings to our Superintendent.

Q Have you reduced them to a Board resolution, and will you do so?

A We have passed several resolutions in the past. I am really of the opinion that we have done this in the past, but if it would make you feel better, well, I am sure that the Board would, you know, go along with that because it's fair.

MR. WALKER: Thank you.

THE COURT: Any further questions?

MR. JOHNSON: No, sir.

THE COURT: I guess this concludes your testimony, Mr. English. The Court would like to say all I know about you, all I know about the other Board members, is what I read in the paper except what I have seen and heard here this morning; and the Court is glad to express to you that to me your attitude of [p. 69] constitutional compliance in the operations of the schools is much, much better than it has been in past Boards.

The Court would like to ask you, if the Court should terminate its jurisdiction, will this mean that the Board will terminate its busing program for desegregation?

THE WITNESS: No, sir.

THE COURT: Would it mean that you would lessen your busing program to any degree?

THE WITNESS: No, sir.

THE COURT: Do you know of any other way in which you can bring about desegregation except through busing?

THE WITNESS: I think that it's certainly going to require transportation of some sort, busing of some nature.

THE COURT: This is a must?

THE WITNESS: As to whether this plan or some other plan –

THE COURT: Now last year, the Court would like to ask you if you know – I don't know whether you know – the Court on recommendation of the Biracial Committee and the data that I read of the Board's action on the Biracial Committee, the Court directed that you make certain superintendent changes, that is, superintendent of high schools from Northeast and Douglass and John Marshall and Grant. This was done.

The Court now asks you, was this harmful to the school system?

[p. 70] THE WITNESS: No, sir, I don't believe it was.

THE COURT: Was it in some way an aid to the desegregation of the schools, in your opinion?

THE WITNESS: My personal feeling before the Court handed down its order was that this would be a beneficial thing. My objection was that the Court did it instead of the Board.

THE COURT: The Board did have an opportunity to do it.

THE WITNESS: The Board did have that opportunity and did not.

THE COURT: I have read your report. Do you have any further statement that you would like to make for the record outside of what the lawyers and the Court have said? The Court would like to hear you, just a free statement if you want to.

THE WITNESS: Okay. Thank you, your Honor. If I could refer to notes?

THE COURT: Yes, you may.

THE WITNESS: Well, I would say that of course we want to operate – we feel like that we can handle our problems and our responsibilities without court jurisdiction.

We believe very sincerely that we are operating a unitary school system. I really believe that the court order, the presence of the court order stifles in a way the creativity [p. 71] within the school system and I will cite one case.

When we were, as a Board, debating the innovative high school, the Superintendent at that time used as a reason for us not to set up such a program, was a concern that the Court would reopen the entire Dowell case, hold a hearing and reopen the whole thing, and the fear was that the Court might order some brand new plan on the District.

I think that this is inhibiting to people within the District, as far as administrative people maybe, our staff, that feel like there is no reason to try to have different things sometimes because of the little fear that maybe the

Court is not going to approve it or that it would in some way cause a shakeup within the present plan.

I think that also the community in some sense has faced reality in this and accepts, although not liking necessarily the Finger Plan and busing; but the community has now come around to accept reality. I think that actually the court order creates a bad image or, yes, it is a bad image for the School District, for our community. It indicates to the people outside of this District the lack of responsibility on the part of the Board of Education. I think that's the way it is interpreted.

Also people who do not want to be involved in court ordered busing, if you will, may go to suburban communities and even take businesses or industries that might even locate [p. 72] outside of Oklahoma City or encourage their employees to live outside Oklahoma City, which would and I think does really defeat the purpose of the court order which is to desegregate – integrate the school system.

That if you have fewer whites coming into the school system it is going to make integration that much more difficult and I think that this School Board will operate in a very responsible manner out from under the Court's jurisdiction recognizing that, certainly, as I said before, there's a possibility of a lawsuit if we are not doing the right thing. There is also HEW which has its own Office of Civil Rights, its own standards, which they can keep very good tabs on us, I would say; and federal money is certainly a big incentive to do the right thing.

And that would be my statement.

THE COURT: The Court appreciates your statement, appreciates your views. Of course the Court feels as though the Court exercised no absolute control or no absolute jurisdiction over the activities and operation of the schools except to see that you do desegregate the schools, and up to now or up to the Finger Plan, I think everyone would agree that the schools were not in compliance with the constitution.

But since the Finger Plan has been in operation, and it took a long time to get it into operation, the situation is improving but I don't see how that outside of the thought of [p. 73] the Court having an order over the School Board to constitutionally comply with desegregation of the schools, the constitutional requirement – but I can see where the very fact that the Court is controlling jurisdiction has an effect upon the public and it has had a tremendous effect on the public.

As a matter of fact, our public here, as I view it in Oklahoma City, is that the whole busing program should be terminated and desegregation should be terminated.

But I do appreciate your statement. As I said earlier and in the beginning, the sooner the better for me and I can do this when there is proof of constitutional compliance today and tomorrow.

All right, you may step down.

(Witness withdraws)

THE COURT: It is now almost 12:00 o'clock. Will it be agreeable to everyone if we take a recess until 1:30? Does anyone object?

We will take a recess then until 1:30, at which time the Court will hear further testimony.

Court is in recess.

(The noon recess is taken.)

[p. 74] AFTERNOON SESSION

November 18, 1975

THE COURT: Are you ready to proceed, Mr. Johnson?

MR. JOHNSON: I would like to call Dr. Smith to the witness stand, please.

THE COURT: Very well, Come around, Mr. Smith.

THOMAS J. SMITH,

called as a witness on behalf of the defendant, being of lawful age and having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Johnson:

Q Will you state your name and official position with the Oklahoma City Public Schools?

A Thomas J. Smith, Superintendent, Oklahoma City Public Schools.

Q And how long have you been Superintendent?

A Since July 1, 1975.

Q What position did you formerly hold?

A Immediately preceding that, since 1968, Assistant Superintendent, Oklahoma City Schools.

Q And what has been your other experience in the Oklahoma City Public School System?

A Assistant Principal of U. S. Grant High School for four years; Director of Purchasing for the School System; Assistant [p. 75] Business Manager; Director of Research and Statistics; and Assistant Superintendent and Superintendent.

Q What degrees from institutions of higher education do you hold?

A Bachelor of Science in Education from East Central State University at Ada; Master of Science in Education from Oklahoma State University; Doctor of Education from Oklahoma State University.

Q Have you made any studies or had any experience in the field of school desegregation and integration?

A Yes, sir. In addition to keeping informed, keeping current with the provisions of desegregation, in 1969 and '70 I was assigned the specific responsibility of working with agencies, organizations and individuals and others in trying to establish or develop a plan of desegregation to be utilized by this school system, or the Oklahoma City School System.

Q Have you had occasion to have conferences and consultations with the Office of Civil Rights, with people in the U.S. Department of Health, Education and Welfare?

A Yes, sir, on several different occasions as well as conferring with a consultant from the University of Oklahoma, working also with HEW officials in Dallas, Office of Civil Rights in Dallas.

Q Dr. Smith, are you familiar with the order that was entered in this case on February 1, 1972 that adopted a school integra [p. 76] tion plan?

A I am.

Q Can you state whether or not to your knowledge this order has been complied with?

A To the best of my knowledge it has been complied with.

Q Can you state whether the Oklahoma City Public School System meets the standards and guidelines of the Office of Civil Rights, to your knowledge?

A Based upon my impression and my interpretation of those guidelines that they have established, we do meet those criteria.

Q And was the defendant's last Biannual Report, the report that was filed in this case on October 31, '75, prepared under your supervision?

A Yes, sir, it was.

Q And was the information given in the report correct to your knowledge?

A To the best of my knowledge it was.

Q Are the figures and statistics in the pupil membership by race and grade, by school, by class, certificated personnel, as shown in the report, the latest figures that we have?

A Those are the latest official published data. We do have the current data or the data that is in the data based of the Computer Center.

I might indicate that last week I did check the information [p. 77] and data and that basically is the same as that in the report on the pupil population.

I might indicate that one exception that could be brought to the attention is that of Harrison Elementary School, a K-4 Center; the racial composition of that school, the percentage of blacks has decreased slightly.

Q And can you state what the reason was for that?

A Yes, sir, the loss of one black student on the roll and the increase of one white student made that kind of change in the overall percentage.

Q Dr. Smith what are the procedures for suspension of students from school in the Oklahoma City School System?

A Mr. Johnson, we have some two different types of procedures for suspension. I might indicate that one is what we refer to as summary punishment. This is suspension of not more than three days in case of an infraction of some policy or regulation. The student is informed of the nature of the charge. The student is given an opportunity to present his side of the story.

If after hearing the student's side of the story the principal is of the opinion that it will be to the advantage, or that the student is guilty and it would be an advantage to bring about a change in behavior, he may be suspended and many times his suspension pending parent conference with the parent of that student.

[p. 78] The other type of suspension is what we refer to as lengthy suspension. In these cases it's more than three days. Discussion is held between the principal or the administrator of the school and the pupil. Again the pupil is given the charge for which he is being considered for suspension. He is given an opportunity to present his side of the story.

If the principal still is of the opinion that there is reason to believe that the student is guilty of the infraction, he may be given a summary suspension pending a formal evidentiary hearing. The student is given the option of requesting a hearing even before a committee, or he may be heard before the principal or an assistant principal.

The hearing is held within a three day period of the alleged violation. At the end of that three day period of time the guilt or the innocence of the student is decided.

I might also indicate then that the procedure for appeal is such that he may appeal that decision to the appropriate director, then to the assistant superintendent, superintendent, and to the Board of Education.

Q What are the policies or procedures for transportation of students?

A The basic concept behind this is to establish the routes for transportation services that follow the most convenient or most logical and most direct route to the school to which the pupil is assigned, from the area in which the student resides.

[p. 79] Q Can you state the names, grade level or general location of schools that have been closed since the Finger Plan went into effect?

A Yes, sir. in 1973-'74, Henry Elementary School was a K through 5 or K through 4 Center was closed. That is located at 5700 South Broadway.

In the same year, Page Fifth Year Center, located at 319 North Geary was closed.

In 1974-'75, Central Middle School at 817 North Robinson was closed. It is reopened as the Innovative School for the '75-'76 year.

I might also indicate that Central Middle School was assigned to the Moon Center, which formerly was the Kennedy Junior High that was closed by the Finger Plan, and then had been utilized the previous year as a Center for the trainable or handicapped pupils; and for the '75-'76 school year then was opened as a middle school.

In addition, '74-'75, Dunbar Fifth Year Center, located at 1432 Northeast 7th was closed, with those students being assigned to Edwards and to Page-Woodson School.

I believe that would include those schools that have been closed. I might indicate further that all of the closings were approved by the Court prior to the official designation of the closing.

Q What considerations were there for closing the schools?

[p. 80] A Closing of these schools primarily was based on the loss of attendance at those units, with the exception of Central, and that school was moved to a newer, more modern facility, one that was constructed for pupils of the middle school age, and also to make room for the innovative school to be established at Central.

Q Is the implementation of the innovative school being monitored?

A Yes, sir. Built into the plan is a program to make an assessment and an evaluation and a perpetual monitoring of the program.

I might also indicate that built into the selection process of students is a procedure that takes into consideration the grade level, the school from which that student is assigned, the sex and the race.

I might also further indicate that the plan does specifically indicate that under certain conditions three of those factors might be altered, but it also very specifically states that the racial factor cannot be altered.

Q What is the racial composition of the faculty or staff of the school?

A Those currently assigned and working at Central, we have nine total certificated staff members, with two of those nine being black.

We do have eleven that are designated for that should the [p. 81] enrollment materialize, with three of the eleven being black.

Q What testing devices are used in student placement in the Oklahoma City School System?

A I might indicate that we have tests administered for the assessment and placement of pupils in some eleven different programs, ranging from a regular school program to the educable mentally handicapped that are trainable, the trainable support, physically handicapped, multi-handicapped, partially sighted, the blind and hearing impaired, learning disabilities and the emotionally disturbed.

I might also indicate that these are grouped into major types of tests, those being intelligence tests, the perceptual motor tests, the visual processes, the auditory processes, and the language development.

Our system currently is using some twenty-nine different tests or batteries of tests in the assignment or placement of pupils in classes.

These tests are generally those that have been standardized on a national or regional basis, and do have the validity and reliability factors that have been established.

Q How are students assigned to a particular class in an elective course?

A Students enrolled in the spring for the classes for the following fall, each students [sic] in a high school is provided with a schedule of all those classes that may be offered in an [p. 82] individual school. They are provided with those basic courses that are provided either by state law or local Board policy for graduation from High School.

They are also given information by their counselors related to the courses of study that are recommended if they are pursuing a particular career, if they plan on going on to college, if their program is going to be determined as a terminal educational program or an entry level program for other training.

The student then selects a designated number of courses and normally the student will carry some five or six classes. However, they are required to list, and I am not sure of the exact number, some eight or nine courses.

That schedule then is submitted to the Computer Services Department and the computer is utilized to schedule those students, each student into a class, with a limited number of conflicts in that schedule then minimized by the computer schedule.

The elective courses then are just as they are stated. They are not a requirement for graduation and the student may elect to enroll in that specific course.

Q What is the policy for transferring students from one school to another?

A When we are talking about transfers we are really talking about those legal transfers, and to further clarify that, that [p. 83] would be the transfers that are interdistrict or between districts of the county. Those are under the auspices of the County Superintendent of Schools. By state law he has that responsibility or that office has that responsibility.

The other type transfer is the intradistrict, or what we refer to as our special transfers.

I might indicate that any pupil desiring may submit an application for transfer. However, to obtain that transfer or for it to be approved, there are some very specific reasons for which it may be granted.

One is to obtain a more appropriate educational program. Really that is saying that the program, the course of study, is not provided in their home school, and they may, if space permits, be transferred to a school that does offer that course of study and I might give an example of that.

The vocational agricultural program at John Marshall is somewhat unique to the system. Therefore a student at another school desiring to take vocational agriculture could enroll in John Marshall if space is available.

I might also indicate that to make it possible for members of the same family to attend the same school, again if one member is transferred because of a special education class and that same grade level is taught at that school, if space is available in that building and that is by a pre-determined space factor, then that other member of the family may transfer [p. 84] along with it or if we have a member that attends a licensed nursery program, other members of the family may attend along with that pupil that is attending the nursery program.

We also have a provision to allow a pupil to complete the year at a school even though he may change residence during that school year.

Another is, as I referred to, the assignment of pupils to special education classes. The other is to allow a

student to attend a school in which the licensed nursery is located.

We have had a provision in past years and with the fact that we have very few schools where the black race is in the majority, it really is a minor reason now, but the majority to minority transfer is as it states, those schools where a pupil is attending a school where his race is in the majority may transfer to where his race is in the minority.

We do have factors such as hardship, where food, clothing and shelter is threatened, and under this the documentation is required; the safety factors, hazardous walking areas for an elementary age pupil particularly, and I might say this is after consultation with a representative of the Oklahoma City Police Department, to confirm that they agree that this is a hazardous condition.

Those medical reasons on those transfer applications must be recommended by a medical review committee which has been established by the Board of Education.

[p. 85] Another is to improve the racial ratio by complying with the implied intent of the federal court order. As an example, if we have a school where the ratio of blacks is nearing the upper limits of the allowable factors, we may transfer a black student from that school to one where the racial composition is primarily white, and could improve the conditions there.

And then the other is where Juvenile Court order decisions or the Juvenile Court directs us to assign a student to a particular school.

I might indicate that all of these reasons have had prior approval. They have been submitted to the Court for consideration and have had prior approval.

MR. JOHNSON: I believe that's all.

CROSS EXAMINATION

By Mr. Walker:

Q Dr. Smith, we have been in this a long time now.

Can you tell the Court what the difference is between this Board and the Board that you were working under in 1969?

A My primary difference, Mr. Walker, would be the fact that I was an Assistant Superintendent at that time and now the Superintendent, and have a more direct role or relationship in working with the members of the Board.

In 1969 the relationship or the communication with the Board was through the then Superintendent of Schools.

Q As I recall in 1969 - 1970 or thereabouts, you were more [p. 86] or less the Board desegregation expert; is that your recollection, too?

A I was assigned the responsibility of work in the desegregation field, yes, sir.

Q Do you feel that Board at that time sought in good faith to implement the requirements of this Court?

A Mr. Walker, I am of the opinion that at that time they were implementing what their interpretation was of

good faith at that time of compliance with the court's order.

Q Was the Board which succeeded that 1969 Board in your judgment operating in good faith, pursuant to this Court's instructions?

I don't know what time the Board changed but apparently between '69 and '72 it changed. Now did that Board, whichever the change was, operate in your judgment in good faith?

MR. JOHNSON: Your Honor, we object to that question going into this opinion about good faith. I don't think it's a proper question.

MR. WALKER: Your Honor, I have some difficulty with the question, too; but Dr. Smith is suggesting to the Court, I think through the motion, that there is some reason why the present composition of the Board gets us from past composition of the Board insofar as philosophy is concerned. I am trying to get some notion of what point in time –

THE COURT: Well, to answer this question may be [p. 87] embarrassing to him, and I don't see how it is going to help me, that is the Court, because not only do I know in my own heart and mind but I do feel and the record will support it, I think, that this present Board and this Superintendent have an entirely different attitude toward desegregation and their attitude is more compatible to the constitutional requirements.

If you think it's helpful to you or to the record, you may proceed but I don't think it's helpful to me because I

really stayed awake many nights wondering about the old Board.

MR. WALKER: All right. I want to be helpful to the Court. I think the record in that way will be properly developed.

THE COURT: I think so.

Q (By Mr. Walker) Now Dr. Smith, do you recall previously testifying that you felt that the school system was properly fulfilling its obligation under the constitution; each time you testified you testified in support of whatever plan was in operation at that time, haven't you?

A I have testified that we were implementing those in good faith and in our opinion they were in compliance with the constitutional requirement, yes, sir.

Q In fact you were doing that not only because you believed it but because that was the policy that you were employed to take, isn't that correct?

A Primarily because of my belief, Mr. Walker.

[p. 88] Q But you believed back then in 1969 when you did not have more than a handful of black students in white schools under freedom of choice that that met the requirements of the law, didn't you?

A When we submitted the plan in '69 and '70, it was the opinion that that would satisfy the requirements, yes, sir, of a desegregation plan.

Q And so that at all stages of the game, whatever plan has been submitted by the Board, you have had substantial input into it, haven't you, except for the Finger Plan; isn't that correct?

A In most cases, yes, sir, Mr. Walker.

Q Isn't it true to this date you have yet to present to the Court an alternative plan for desegregation to the Finger Plan, which would achieve more or less the same results as the Finger Plan?

A It is correct that we have not filed or submitted an alternate plan to the Finger Plan.

Q Now do you have in your own mind any alternatives, in the event that the Court does, let us say, well, that you come up with another alternative just as effective?

A Mr. Walker, I am not sure that anyone is proposing that we would necessarily eliminate the Finger Plan now. I think there may be improvements on it, but as far as any specific plan, I would not have a plan.

[p. 89] Q Now you use the term "necessarily" eliminate the Finger Plan.

A Right.

Q You do recognize by the Court's withdrawal or relinquishing jurisdiction there may be a move underway to do that, do you not?

A Yes, sir. However, I am also aware that we have guidelines and regulations with which we must comply. We are aware that we would be under the watchful eye of others during this process.

Q You are suggesting to the Court that you would rather be under the watchful eye of HEW than the Court, is that correct?

A I am saying that there are some advantages, I feel, for this school system not to be under the jurisdiction of a court, yes, sir.

Q Are you aware of the fact that HEW has been held by a Judge in the District of Columbia not to have enforced in the southern state the non-discrimination provisions of the Education Act; you are aware of that, aren't you?

A (Nods affirmatively)

Q Are you aware of the fact that that case is styled Adams versus Richardson, Adams versus Weinberger?

A Right.

Q And now Adams versus whoever the Secretary of HEW is?

A Right.

[p. 90] Q And you are aware, are you not, that the basic charge is that HEW does not protect the rights of black children to the extent that the courts have done or the constitution requires, are you not?

A I am not aware of the last charge you made that it does not protect the minorities.

Q Then you are not really familiar with Adams versus Richardson?

A I have read the case, yes, sir, I have.

Q And did not Judge Pratt find in that that HEW was not enforcing the law?

A At that time that was correct.

Q And is not HEW under injunction now to come forth with a plan to enforce the law?

A That is correct.

Q And no plan has been approved by Judge Pratt for enforcing the law, has it?

A I am not aware of any.

Q So you are asking this Court to allow, at least to relinquish jurisdiction so that you can go and be placed under HEW's jurisdiction where there is no plan for enforcing the provisions, the non-discrimination provisions of the law?

A I am not saying that we are asking the relinquishing of the case here and then that we go under HEW. I am saying that we are aware that we will have guidelines and regulations, and [p. 91] which we must follow. The point here is to ask for the motion to dismiss the case.

Q Is one of those reasons the belief that guidelines of the administrative federal agency would be less stringent?

A No, sir.

Q If you are going to be under guidelines anyway, what difference does it make whether you are under HEW or the Court?

A I think the negative image that might be associated with being under court supervision or jurisdiction, as far as this community is concerned, is a drawback to our school system.

We are trying to project a positive image and I think this, in a sense, makes that goal, that task more difficult.

Q Can you as Superintendent commit this District that it will maintain a racial balance in all respects in the school system for the foreseeable future?

A I can make a commitment only on behalf of myself and the administrative staff, that certainly we are committed to the desegregation and to the provisions providing the integrated education program for our young people.

Q I see, but can you make a commitment now that that will be the commitment in five years or eight years?

A No, sir, I can't make a commitment beyond July 30th of this year.

Q That's right. Now what is the length of duration of your contract?

[p. 92] A One year.

Q And what is the date that you entered into the present term of that contract?

A July 1, '75.

Q So that you have practically three, well, several – six months, seven months to go?

A On this contract, yes, sir, and by Oklahoma state law you can have only a one year contract.

Q Now Mr. English, the Board chairman, when does his term expire?

A As I recall, Mr. Walker, he is up for reelection in January of this year.

Q All right.

A Of this coming year.

Q So that we really, with regard to you two people, can get no assurance at this time that youall will be there beyond January of next year, except that your contract will be paid through July or June of next year, is that correct?

A I can only assure you that I will be here through June 30, that's right.

Q Now with regard to your knowledge about the law, Mr. Johnson asked you if youall were in compliance. Each time you testified you told the Court that you were knowledgeable about the law, haven't you?

A Yes, sir, our interpretation of the law.

[p. 93] Q And each time in the past you have been wrong, is that correct?

A No, sir, I am not saying that we have been wrong, no, sir.

Q With regard to school closings, you say that the Court has approved the closing of certain schools. That is really not exactly accurate, is it, in that the Court suggested or at least approved a policy in the Finger Plan of suspending from operation for the time being those schools where capacity was unnecessary for the desegregation program; and the Court did not say that you could permanently close those schools, did it?

A Each time we have proposed closing schools we have submitted those to the Court for consideration and for approval to close those schools.

Q But you never suggested to the Court that you wanted to close them permanently for all times as educational facilities, did you?

A No, I am not sure we said permanently and for all time.

Q Now with regard to the closings, it is true that you do not have a uniform standard for determining school closings other than the degree of enrollment within the particular school?

A We do have now the other factors of the cost of the utilities, cost of services, cost of maintaining buildings, the quality of the program as offered in those schools. Sometimes it is determined by the number of students enrolled in [p. 94] that school. We do have additional factors now.

Q Have you sought approval of the Court for the use of those factors in determining which schools will be closed?

A At the present time we have not.

Q So that the only factor that has been approved by the Court thus far for the school closing, isn't this true, is the factor of obsolescence or under-utilization; isn't that right?

A I would say that the closing of Central was not for that purpose, and the reestablishing of the program at Moon would not have been for that purpose.

Q That's right, so what I am simply saying, that you have been doing things with regard to school closing pursuant to no court approved standard, even though the

Court may have said "Okay" because there was no objection to it by the Biracial Committee?

A I am not aware of any court approved standards for the closing of schools.

Q You are aware that you have to have standards for school closings, aren't you?

A And we do have those.

Q Can you explain to the Court why a school which is capable of being utilized, not only now but into the future for ten or twenty years, has to be permanently closed merely because enrollment drops below a certain amount or percentage?

A I'd say, Mr. Walker, the fact that some fifteen or sixteen – [p. 95] no, some twenty-five thousand to twenty-six thousand students loss in pupils within the school district means that there is not need for facilities that were once present in this school district.

Q All right.

A At one time some seventy-five thousand or seventy-six thousand pupils; at the current time we have approximately fifty thousand pupils in our school system and therefore would not have the need for the numbers of classrooms or facilities that we had at the time of our peak enrollment.

Q All right, so need is one factor. Now youall do have the power to shift students to cause enrollment to be more or less the same percentage within each school, don't you?

A As I understand, with the Court's approval for those reassignments of students.

Q So that if enrollment in one of the schools in the black area gets down to the point of like a hundred in a school with a capacity of five hundred, you have the power to not necessarily close that school but at least to shift some students, as you shift black students for racial purposes, to shift some white students, perhaps, into that school to bring it up to a more efficient operating, more economical operating level, is that correct?

A With the exception of Douglass and Moon, Douglass High School and Moon Middle School, the schools located in what you [p. 96] refer to as the black community are Fifth Year Centers, and all white students are now currently assigned to those schools.

Q I see, but isn't it true that in your twelve grade organization structure that one area where the percentage of enrollment is the lowest of both races is the fifth grade?

A I believe it probably will show that.

Q All right, so that we know that if white youngsters are being told by the Plan and the way youall are operating it, that they don't have to stay in the "black community" but one year, that they can go outside the school system or in a private school or what-have-you for that one year and then come back in the sixth grade or seventh grade – cannot you adjust a plan to make those Fifth Grade Centers so as to get, dealing with a closing factor, Fourth and Fifth Grade Centers, Fifth and Sixth Grade Centers; I mean have you considered that option?

A Any modification I am assuming we would come back to the Court for the approval there for any modification from the Finger Plan.

Q What I am suggesting to you is that instead of closing the schools in black communities, Fifth Grade Centers, because they are not up to population, that you have some other options and that you have not submitted those options to the Court which good faith I suggest would require.

Is there any particular reason why you haven't sought to [p. 97] maintain educational presence in the black community to the same extent, in terms of buildings, that it is maintained in the white community?

A I would say the major difference in the maintaining of the buildings is in the age of the facility. Those buildings of comparable age are in comparable condition of those in the Fifth Year Centers currently. Certainly we make no distinction in the maintenance of those because they are in one part of the community or another.

I might also state that we believe in the Fifth Year Program. I think it's a good quality educational program that is offered in those schools, and certainly the fact that the loss of the students is there, that would reduce the number of students available to enroll in those schools.

Q Do you see, though, where we are going? I mean you close schools merely because the enrollment is low, are you not telling the white community that you can close every school, since every school still has to be majority white, that you can close every school in the black community by their merely not going to it?

A I think I ought to mention, though, that we have closed schools not only in that community but in other sections of the community as well.

Q I understand, but the majority of the closings have been in the black community, haven't they, Dr. Smith?

[p. 98] A There really have not been that many closings. There has been one elementary that's in a predominantly white area, and two Fifth Year Centers, with one of those being reassigned, and then the Central program being moved from Central to the Moon School.

Q Was Henry located in the black community?

A No, sir, Henry is in the south part of Oklahoma City.

Q Page?

A Page is in the northeast side. That is in the black community.

Q All right, but Henry was a predominantly black, wasn't it?

A No, Henry was predominantly white.

Q It was K, 1, 2, 3, 4?

A Right.

Q Now Page, though, and Dunbar were closed?

A That's correct.

Q And then Star-Spencer has been closed?

A No, sir.

Q Dunjee has been closed?

A Dunjee High School was closed by order of the Court under the Finger Plan.

Q By permission of the Court suspended from operation. Do you recall that Dr. Finger specifically stated that he was proposing that the school be suspended from operation for the time being?

[p. 99] A Okay. Dunjee was suspended from operation.

Q Now Woodson, was that a former black school?

A Page-Woodson is still operating. Woodson is operating currently as a Fifth Year Center.

Q Well, according to an article by Mr. Jim Kolecky of former elementary school buildings to be sold by the School Board include, paragraph 3, Woodson.

A That's the old Carter P. Woodson, Southwest 12th and Harvey, that has not been utilized for school purposes for probably fifteen to twenty years.

Q Okay. Now with regard to those school closings, you did not seek, as your President testified, to get the Court's approval before putting them up for sale, did you?

A Sir?

Q You did not seek to get Court approval, as an administrator, for the sale of these buildings before you offered them for sale, did you?

A The facilities that we have now that are no longer utilized for school purposes; are those the ones you are referring to, the twenty-two schools?

Q Is it twenty-two?

A Twenty-two schools and sites. Most of them are vacant sites that the School District has owned for a number of years. They are no longer needed in the opinion of the Administration, and many of the others that had buildings on them have not been [p. 100] utilized for school purposes for ten, fifteen or twenty years.

Q Have you explored the possibilities and alternatives of utilizing some of that space that you have for the construction of a unitary school system that does not maximize busing?

A Mr. Walker, those facilities would be far inadequate to be utilized for school attendance purposes.

Q How about the 19.7 acre place at 4101 South 27th Place?

A That is a site adjoining Pierce Elementary School, I believe. We do have an elementary school on that site now and that's an adjoining acreage.

Q 19.7 acres is large enough for an educational park?

A At one time that was being considered as a junior high school site.

Q My point though is this, if you have 19.7 acres and you are exploring the possibility of the educational park as an integration device, this would lend itself to

further desegregation and integration of the school system, wouldn't it?

A In my opinion the nineteen acres would not be adequate as far as the size of the site. It would certainly be a beginning point, I assume.

Q Well, you had twenty-one acres at 51st and Foster.

A Yes, that's the former Foster Elementary School site that has been no longer utilized for school purposes for a number of years.

Q You have at least forty acres of land right there that you [p. 101] could use for he devisation [sic] for really an extensive educational park concept, which is agreed upon by you even as an alternative to the present plan, is that correct?

A It is an alternative that could be considered.

Q And you have favorably discussed that on numerous occasions, haven't you?

A I don't know what you mean by favorably discussed.

Q Well, when Dr. Max Wolff was here, when Dr. Eisen was here, and when the other consultants appointed by the Court were here, you did favorably make comments about the educational park device as a method for reducing busing and bringing children closer together.

A I don't know that I said for reducing buses, busing. I said that it could be utilized as a means for bringing

about desegregation and certainly it was deserving of further consideration.

I believe I further stated that if you had no facilities in which to house pupils now but were starting and building new facilities, certainly you could consider that more seriously as a measure or means.

Q So that you propose to the Court to eliminate one of your options, one of your future options for further desegregation without even getting court approval by the sale of school space and school buildings.

I show you this article which appears in the "Daily Oklahoman" [p. 102] 11/14/75, and ask you – it is entitled "Old Schools Go On Block". It is by Jim Kolecky. Are you familiar with this article?

A Yes, sir, I have read it.

Q Are the contents of that article basically correct?

A I don't know as I read it that carefully but I would assume that, knowing Mr. Kolecky as I do, that he would be basically correct.

MR. WALKER: I should like to have introduced as Plaintiff's Exhibit 2.

Q (By Mr. Walker) Is there any particular reason you didn't tell prospective bidders or purchases of that land, or space, that the sales were conditioned upon court approval?

A No, sir. We have as a part of the bid form, however, that any prospective bid is subject to either acceptance or rejection by the Board of Education. These are

again exploratory in a sense to see if there are those customers or potential customers that might have an interest in the property.

Q Going to another subject, with regard to the staffing of the innovative high school, is it true or not that your initial staff persons, including the principal or the director, the assistant principal or the assistant director, were white?

A We do have an assistant director. We have just a director and then the facilitators, which are teachers. They are referred to as learning facilitators.

[p. 103] Q The first ones you hired were all white, isn't that true?

A The first ones, yes, sir.

Q Now Doctor, did you develop any objective recruitment standards before you sought this person to, before you sought the person now, to fill this position in the school system?

A Job descriptions were written, with the criteria of the type person that we were looking for in the selection of a director. They were posted in every building, as well as in the Central Office building. The placement bureaus at the neighboring colleges and universities were also advised that we were looking for such a person.

Q For the directorship?

A Yes, and for each facilitator.

Q Did you have any applicants from the black community, any black applicants for the directorship?

A I believe there probably were. I am not certain on that, Mr. Walker.

Q Do you keep a record of your applications by race for those types of positions?

A Those are kept, yes, sir. We would have those on file.

Q Now did you have an adequate pool of white applicants from which to make a selection?

A I would say we had an adequate number of applications, both black and white, male and female.

Q When you wrote the job description, did you have anybody [p. 104] in mind for this job?

A No, sir.

Q Who did you pick for that job?

A Mr. Robert Alyea.

Q Mr. Robert Alyea?

A That's correct.

Q What was he formerly doing within the school system?

A He had been a teacher and then his most recent assignment had been as a research associate in the Research Department.

Q Did he have any previous administrative experience?

A Not in the administrative sense.

Q Did you write the job description so as to deny or at least not make important previous administrative experience?

A It was not as a requirement or prerequisite that he have that.

Q Did you personally know this man; in other words, is he a friend of yours?

A No, sir. Well, all the staff members are friends, but not a personal acquaintance, not a personal friend, as far as social contact.

Q Have you submitted to the Board any objective criteria for the consideration of personnel for this school or any other school within the system?

A Have I what? I'm sorry.

Q Have you developed and presented to the Board for their [p. 105] consideration or approval objective criteria for the hiring, the promotion, termination, demotion, or bestowing of special benefits upon staff?

A All staff vacancies are, the information is supplied to the members of the Board, with most of those of an administrative nature having the criteria or qualifications desired to fill that position. In addition, in the reorganization of the administrative staff, the change that has been made in the responsibilities of the Personnel Services Department, one of their major responsibilities will be the development of an affirmative action plan and they will assume the responsibility totally for recruitment, selection, employment and training of all employees.

They are in the process of coordinating the development of job descriptions for every administrative position in our school system.

Q So that you don't have objective criteria now?

A For all positions, no, sir.

Q Now are you aware that this is one of the early requirements, early requirements of the Court's decision in this case, that you develop and implement objective, a system of objective Court approved criteria for the placement of personnel and new personnel?

A Mr. Walker, I am not sure that I could say yes in answer to your question. I am not sure of being that specific. I am [p. 106] not sure how complete you are saying the job description should be.

Q But you have determined that there is a need for an affirmative action plan, isn't that correct?

A Yes.

Q Does that not suggest to you that there is a need for continuation of jurisdiction?

A No, sir. The affirmative action plan is a commitment on our part, as well as the requirement of EEO, as well as the Title 9.

Q Have you discussed the EEO requirements with the School Board?

A I would say the School Board is well aware of the requirements.

Q That's not the question. Have you discussed the EEO requirements of Title 7 as it pertains to the development of an effective affirmative action plan with your School Board in a public meeting?

A Not in a public meeting, no, sir.

Q Well, where have you discussed it with them, Doctor?

A In the conferences and written correspondence or communication with members of the Board.

Q When do you think that you will have this affirmative action plan which will govern the employment of teachers and other staff?

[p. 107] A The time table that has been given to the Personnel Services Department is to have it developed and ready for full implementation no later than the second semester which will begin January 19, 1976.

Q Did you intend to have the Court approve the affirmative action plan before you implemented it?

A I am not sure that we have any plans along that line.

Q You do recognize that it has desegregation overtones, don't you; it is a desegregation plan, isn't it?

A I am aware that its major provision is that no discrimination can be allotted or registered or held against any race, sex, national origin, other factors.

Q Now can you commit to the Court that whatever plan you come up with will insure black people the opportunity to hold specialty positions, counselor jobs,

band director jobs, coaching jobs, other kinds of jobs in numbers reasonably proportionate to the black student proportion within the schools?

A I am certain that the affirmative action plan will make provisions for those.

I should also indicate that we now have black band directors. We have black football coaches in our system at the present time.

Q Can you state to the Court now that roughly one-fourth of your head football coaches, head basketball coaches, head track coaches are black, that roughly one-fourth of your band direc- [p. 108] tors, choral directors, counselors at the secondary level are black?

A I could stand corrected but I believe I can make that statement and it would be correct, Mr. Walker.

Q You think you can; head coaches, the head positions. Can you state that one-fourth of the principals at the high school level are black?

A Just slightly less than one-fourth. We have nine high schools in operation with two of those being black.

Q Now it is true that in the last eight years, nine years, you have not hired a single black principal. You have kept the two you had, but you have had some principal turnover, and each time you have had a principal turnover you have replaced that person with a white person, isn't that correct?

A I believe Mr. Robinson, principal at John Marshall, has been employed within that period of time.

Q He was at Douglass or at Northeast?

A No, sir, he was in Kansas City.

Q But he came to Douglass or Northeast, didn't he?

A He came to Northeast as principal there.

Q Which was a black school and would be typed as such until Judge Bohanon disestablished it, isn't that correct?

A Yes –

Q (Interposing) The point though is that you were assigning blacks, or at least until Judge Bohanon changed that pattern, [p. 109] you were assigning black principals at the high school level only to historically black schools and that youall have never hired a black initially who had not been otherwise placed in the system to a white school at the secondary level?

A We have this year. I assigned a black principal to Jackson Middle School, secondary school.

Q Where was he before?

A He was assistant principal in one of the high schools.

Q But that's the operation, though. Is that what you told the Court you would be doing when you are talking about modifying the Finger Plan, you said if you would have a black principal in a school you would have white vice principals, and if you had a white principal at the high school, you would have at least one black vice principal, with the notion being that the next vacancy

that would occur below the high school level would go to one of the assistant principals.

That's your system though, isn't it?

A I am not sure that it is that specific and spelled out, but the fact was that we employed and assigned the black to the Jackson Middle School, which is located in a predominantly white community.

Q How many black principals of junior high schools are there and how many white principals are there?

A We don't have any junior high schools. There are middle schools and high schools.

[p. 110] Q All right.

A We have two white school principals that are black.

Q Uh-huh.

A I believe we have two middle schools. Just a moment and I'll – I believe Harding and Jackson are the two middle schools.

Q How many middle schools are there now?

A There are eleven.

Q All right, two out of eleven. Do you have some pattern of two now, there would be two black principals at the secondary level and two at the middle school level, and perhaps two coaches and two band directors?

A No, sir, we don't have that. It's coincidental that there happen to be two in each place.

Q Now one of the issues that we are not prepared to deal with, of course, in specifics at this time at this hearing are blacks in specialty positions, but you do have those statistics and they would be available if necessary, is that correct, blacks in specialty positions, and whites of course in specialty positions?

A We do have that data available, yes sir.

Q Now have you established a promotion system and got court approval for that so that blacks who come and start off working as teachers can move on up in the same manner that whites do.

A Mr. Walker, that is a part of the affirmative action pro- [p. 111] gram and a part of the challenge or charge given to the Personnel Services Department.

Q Okay.

A And that is the information related to promotional practices.

Q Let me ask you, when did you get your Doctor's degree?

A 1966.

Q When did Dr. Todd get his?

A I'm sorry. I don't know that. About 1970, 1971, something like that.

Q Did Dr. Todd ever perform any responsibilities in the school system on an equal level with you before you became superintendent, or superior to you, I mean in terms of pay or responsibility?

A I believe not, Mr. Walker. He was Director of Curriculum at the time I was Assistant Superintendent.

Q All right. Now I understand he was in competition with you for the superintendency.

A He was one of the four final –

Q Do you know of any school system in Oklahoma which has a majority white enrollment which has a black superintendent?

A I am not familiar with those in the larger rural schools, but I am not aware of any.

Q Do you know what the objective standards if any were which the Board predetermined before narrowing the number of appli- [p. 112] cants to four and then finally deciding upon you for the superintendent's job?

A I think that would be a more appropriate question to ask of those members of the Board.

Q All right.

A They did develop the criteria or the desired qualities and did conduct interviews and did have the, I am sure, objectives in mind.

Q Going to another thing. You testified that you had twenty-nine standardized tests. Is this any different now than it was in 1969 and 1970?

A We have had a Testing Committee that has evaluated the testing program within the last two or three years, and there have been some changes made in those. I am not sure of the specific tests that were altered or

changed, but we did have a Test Committee established to review those.

Q Have those tests ever been validated within the population of Oklahoma City?

A Mr. Walker, I am not sure I can answer that. They are validated by the manufacturers of the exams and then unless we had the specific tests available to determine what the validation process was, I wouldn't know how to respond.

Q Now you have heard the Board chairman say that in his judgment the educational, the educational, the quality of education delivered to black students is less or has been less [p. 113] than the quality delivered by the District to white students.

Do you concur in that judgment?

A I would say that there has been no deliberate attempt to provide a less quality for one group than there has been for another.

Q How does it happen?

A There is more than just the provisions for what the school system provides, Mr. Walker. There are such things as parental interest, the parental push or drive, their desires, as far as educational program.

The school system can provide one aspect of the program, and that's the staff, the services, the facilities, try to develop the interest and motivation to learn, but certainly the attitude and the interest of the part of the parents is important.

Q So you don't agree with the chairman on this point?

A I am not saying that I agree or disagree. I am just saying that there are more factors that are involved in this and there was no deliberate attempt to offer a quality to one group that is different from that of another.

Q Now there is now though a deliberate effort on the part of you, as administrator, to offer or at least to narrow, offer a program which narrows the gap in achievement between black and white students?

A During the past two or three years our school system has [p. 114] gone through an extensive accountability program to make as assessment of needs by individuals schools within the School District, and based on those determined needs, then the program was established to satisfy those needs for those pupils in that particular school. There is a deliberate effort there to determine what the needs are and to establish the program that meets those needs.

Q Now Doctor, you do know that you have courses offered, you have teachers hired, that you have in effect committed to your students that you are going to, for the next year – that is the time you are offering courses – that you are going to have this basic structure within the school; you know that, don't you?

A Our enrollment is processed during the spring of the year preceding the opening of school the following the year, the staffing based on the projected enrollment with the courses then in the high school that have been elective on the part of the pupils.

Q So that basically the students don't have very much input in determining what courses are offered in the school, do they; that's an administrative judgment on the part –

A No, sir, they do have a determination in the high school. We have a list of proposed courses for high schools, some two hundred courses, and the student then selects those courses that he desires.

[p. 115] Q Do you have any standard to determine how many or how few students you will have to have before you can offer a course?

A Depending upon the type program; regular programs, normally fifteen or sixteen, and the class will be materialized if the teachers can be employed.

Q Well, let's not deal with the regular program. You recognize, don't you, that if you have a course for one student in a high school for one hour, that the cost of that alone is much greater than the cost for one class with twenty students?

A Mr. Walker, I am not aware of any program where we have only one student, one teacher. I think if you will review the material there you will find that those classes, they are combination classes. In many classes you will have Trig 1 and 2 or you will have Geometry 1 and 2, or you will have Latin 2, 3 and 4 with the same teacher, with several students in that class. The one student in Latin 4 will be receiving personalized or individualized attention on behalf of that teacher that will also have students with the other courses or with the other foreign language class in that.

Q All right, Doctor. A teacher normally teaches either five or six courses a day, doesn't she?

A In the high school, five classes a day normally.

Q Now are you suggesting that if you have that situation or if it's set forth in your computer printout, that the computer printout is in error?

[p. 116] A I didn't understand the question.

Q Are you suggesting that if you have that situation that the computer printout is in error?

A I am suggesting that if there is a class of Latin 3 and Latin 4 with a very limited number of students in one or the other, that it is more than likely a case where that teacher during that class period has both classes, has responsibility for both classes.

Q Let me understand you. How many courses does a teacher teach in high school?

A Depending on their schedule they may have four solids and then the activities or some other program. It's difficult for me to tell just looking at the name of a teacher how many they might have, but they cannot be asked to teach more than five classes for a day by North Central standards.

Q Look at your Marshall exhibit. It seems that all of the teachers have at least five courses except the band teachers, those kinds of people, choir or P.E.

Look at your German, or Spanish and German teacher, Angelica Hale.

A What page are you on?

Q That's on page 7, Marshall. She teaches one class, she teaches three classes where there are no blacks. She's got two Spanish 1's and in one she has got three blacks and in the other she's got twelve. That twelve happens to be with [p. 117] twenty whites.

I will ask you the same question as before, why don't you disperse that twelve so that you will have some better balance within those two Spanish 1 classes?

A I imagine there are problems and conflicts of other selections or elections that that student has made, by the other courses that they have selected, I may not be able to schedule their course in such a way that they can have a schedule that would permit them to change to that other section.

Q Have you asked your computer programmer who determines programs and schedules for students to try to minimize the racial disparity problem?

A On the scheduling the race is not a factor that we schedule the classes on.

Q Does it now occur to you that a computer programmer can be programed themselves to consider race for purposes of making sure that you do not have equal balances?

A It could, I am sure, and that would be another factor that would cause additional possible conflicts within the schedule that would have to be written in and the program then developed to allow for that.

Q But any group of schedules that you have are going to have some conflicts, aren't they?

A That's correct.

Q So this would just be one other way of reducing the degree [p. 118] of racial identification of a class, wouldn't it?

A But I would also state that by the computer handling the scheduling, I think it does eliminate any possibility that there is any deliberate attempt to schedule based on race.

Q Do you give your basketball and football coaches fewer classes than you do the rest of the teachers?

A It depends if they are a team coach, if they are an assistant coach what their particular assignment might be.

Q Do your regular courses carry more grade point credits than the elective courses?

A No, sir, they are all one credit course per semester.

Q I understand, but do they get more grade points for an "A" in an elective, academic elective, than they do in a regular course?

A No, sir.

Q Are you aware of any racial imbalances in your Honors Program?

A We have not had the Honors Program as such unless you are referring to the Seminar Program and things of this nature.

Q Yes.

A And again those are elective by the students and they participate in that because that's what they have elected.

Q What role does the counselor have, Doctor, in the process?

A They can advise and counsel, and indicate to the students what their suggested programs are for their determined career [p. 119] or their location, if they want to go to college prep, or if they want to go to a terminal program, or just an entry level program or some other program. They can suggest and advise and recommend and make aware. The student then and his parents make the determination of their assignments except those that are required.

Q Have you noticed whether or not blacks are moving more or less into academic courses as integration goes on?

A Mr. Walker, I am not sure that I can tell you that I have noticed either blacks or whites going into those. We do know that we have had a decrease in the enrollment in the Advanced Math and in the Advanced Science programs both. In an attempt to turn it around in Science we have made some changes in our Science programs to try to increase those, but we have witnessed the same kind of experience as has been nation wide in a declining enrollment of Advanced Math and Science programs.

Q But you have not set forth a goal of trying to make sure that as many blacks percentagewise move into academic courses as whites, or in the numbers of the

population, and that as many whites move into vocational courses as blacks percentagewise. Blacks go into vocational courses more so than whites in your system?

A I don't believe the statistical data will hold that to be the case. I think you will still find that there is not a disproportionate number in the vocational classes at the Vo-Tech [p. 120] school and others. I would say also that our primary goal is working with the individual students and not in groups of students by races. We would much prefer taking the student with his interest, with what his goals and aspirations are, and then develop the program in light of that.

Q When do you think you will have sufficient data to be able to determine the efficiency, in terms of results, of what you are doing; when will you be able to say to the Court that we are now dealing with our black students to the same extent that we are dealing with white students?

A Mr. Walker, I believe we can make that statement today.

Q Can you do it in terms of results, in terms of who is in special education at all grade levels, remedial education, remedial reading or what-have-you, and in terms of who is in your college preparatory courses?

A Again I would say we base those assignments of those students on the program that is most adequate to meet their needs, and if it's a black student or a white student that needs special training or special attention, we will place them in that class. If it's and academic

course and they elect to do it whether black or white, they will be placed in that class.

Q You did mention that you use your transfer provision occasionally to place blacks, or to remove blacks from some situations for racial reasons to bring about a better racial balance within some other situations, is that correct?

[p. 121] A Yes, it was indicated that utilization of that has been diminished.

Q I'm not talking about majority to minority now. I am just talking about your assignment devices.

Now do you ever use the same devices to place white students into normally black schools?

A Yes, they have worked both ways, right. We did indicate the provision is to improve the ratio at both places.

Q Have you done so within the last year at any of the schools that you propose to close next year?

A We have not proposed the closing of any schools next year, Mr. Walker.

Q You have not proposed the closing of any?

A We have not made any proposal for the closing of any schools for the next year at this time.

Q One final question. In the event that the Court does divest itself of jurisdiction, do you expect the Court also to eliminate the Biracial Committee and the function of the Biracial Committee?

A In our motion to dispose of the case, we did propose the establishment of a Triracial Committee that would be utilizing much the same function, the same procedure that the Biracial Committee is currently utilizing.

Q What would be their function be?

A Primarily to review, to monitor, to receive, to consult, [p. 122] to advise.

Q What good would that do if you are not talking the recommendations and advice of the present Biracial Committee which has at least some support from the Court?

A I believe, Mr. Walker, we have taken the recommendations and advice. We have not followed all of them but we have taken their recommendations very seriously and considered them and as a result of the recommendations I think you will find there have been some changes in it.

Q But you have rejected a good number of their recommendations, too, have you not?

A We have not concurred with them I think this would be in the same category of any advisory committee. They are to offer advice, and you weigh their advice along with your known factors.

Q So at that point the efficiency of the committee would be subject to the degree of at least the role that you would assign it?

A I'm sorry, I didn't get that.

Q In other words, if you decided that you would listen to the recommendations as the Superintendent or as a Board, you would place whatever weight you wanted to on their recommendations without any consideration as to, you know, the kind of factors that are now present in the Biracial Committee?

A Mr. Walker, I would say that any board or administrative [p. 123] organized or established body, their recommendations or advice is going to be considered with a great deal of interest and it will have a great deal of weight.

Q One question about the moving of the principals. Did you recommend to the Board that those black principals be moved to the formerly white schools, the two principals from Douglass and Northeast, did you recommend to your Board that they be, pursuant to the Biracial Committee assignments, transferred to the schools which the Biracial Committee recommended?

A I was not Superintendent at that time, Mr. Walker.

Q Did you concur in the Biracial Committee recommendations?

A On reassigning those?

Q Yes, sir.

A I would not agree to concur that the race of a principal necessarily determines the race or the racial identity of a school. I think that if we follow that concept that every racial school is racially identifiable, because they are one race or the other. I would say that I would disagree with the concept that the race of the principal determines the racial identity of the school.

Q Was that your understanding of what the Biracial Committee was saying and what Judge Bohanon was saying?

A I believe that it was stated that those two principals, particularly in the former predominantly black schools, the fact that they were black in a formerly predominantly white [p. 124] community, that those would be considered to be racially identifiable schools.

Q Especially with those two schools having the highest percentage of concentration of black students, you did not agree with that?

A I said that I did not agree with the concept that the race of a principal determines the racial identity of the school.

Q That wasn't my point. My question is, do you concur with the rationale submitted by the Biracial Committee and the Court for those two transfers?

A I would restate that I did not agree that the fact that those two principals were black made those racially identifiable schools.

I would further state that the school system did comply and did reassign those principals, even prior to the time or during the period of time in which the appeal was being lodged.

Q If you had been superintendent at that time and the Court had divested itself of jurisdiction at that time, would you have implemented the Biracial Committee recommendation?

A Mr. Walker, I would say that the assignment of those two gentlemen to other schools and the assignment of whites to those previous schools has been very successful and I would say that it has worked out quite well. Trying to speculate on what my decision would have been back then I think would be merely [p. 125] speculation.

Q You did not concur. You did participate in the administrative policy decision to oppose that, didn't you?

A No, sir, I would say that I did not participate in that.

Q You did not discuss that with Dr. Lillard in your role as Assistant Superintendent?

A I would say that in terms of discussing it, to be knowledgeable about it and all, the fact that it was discussed but I was not involved in the decision making process.

Q Did you give a recommendation, sir?

A I did not. At this time this was not my role, The assignment of principals was in the instruction area.

Q What is your judgment of the administrative staff's present relationship with the Court-approved Biracial Committee?

A I would say that the working relationship is very good. I would say that the relationship with our liaison members to that Committee has been good over the past two or three years specifically. I would say that the relationship between the administrative staff and the Board of Education and the Committee is good.

Q How many meetings has the whole Board had with the Biracial Committee in the past twelve months?

A When you say the whole Board, I am not sure that I know that. I was not present at some of those meetings, but I am aware of at least three in the last year where at least members [p. 126] of the Committee and the Biracial Committee were present.

I also know that members of the Biracial Committee have dual, as members of our administrative staff.

Q Has the Biracial Committee been an improvement, or at least been an assistance to the School District in implementing the desegregation plan and helping to eliminate those vestiges of segregation or discrimination?

A I would say that they have served their role well. Particularly the last couple of years they have made their recommendations to the Court and to the Board and to the administrative staff.

Again each of those have been weighed carefully and I think some changes have come about as a result of that.

Q Does the Biracial Committee as presently constituted still have a function to fulfill?

A It has been functioning and it is still functioning, yes.

Q I am asking now, is there a role for it now? Does it still have any viable function now to fulfill?

A Mr. Walker, I would say based on our motion that was submitted and the fact that we indicated that we are desirous of continuing the Committee and we have

expanded, instead of Biracial, to Triracial, it's an indication of our agreement with or approval of this type of committee.

Q So that there is still a function for –

[p. 127] A For a committee.

Q And this is acknowledgement that there are still vestiges of discrimination or segregation within the school system?

A I would say there are not vestiges. In my opinion we are a unitary school system. We have no discriminatory practices.

MR. WALKER: We are back where we started in 1969. Thank you.

THE COURT: Any further questions of Dr. Smith?

MR. JOHNSON: Two questions, your Honor.

REDIRECT EXAMINATION

By Mr. Johnson:

Q Dr. Smith, did I understand you to say that the middle school at Central was moved to Moon-Kennedy?

A That is correct. The building that is now the Moon Middle School was the Kennedy Junior High at one time. Then it was the Ninth Grade Center for Douglass High School, with the Douglass plant having only the tenth, eleventh and twelfth grades.

Q Was that the first and is it the only middle school in what is called the black community?

A Yes, I would say in the major part of the school district that is correct.

Q The Finger Plan did not call for a middle school in that general vicinity?

A That's correct.

Q One more question. On the transferring of students from [p. 128] Dunbar to Edwards, I ask you whether that was due to the low enrollment?

A It was to help to boost the enrollment of whites at Edwards and then also help on the transportation as well, aso [sic] it was really a dual purpose there.

MR. JOHNSON: That's all.

THE COURT: Any further questions of Dr. Smith?

MR. WALKER: None, your Honor.

THE COURT: Dr. Smith, the Court will ask you one question. Can you tell the Court how the Court's jurisdiction has a detrimental effect on your school system other than the required desegregation of the constitution?

THE WITNESS: Your Honor, I think it is probably psychological and public relations reasons. One of our major goals is to improve the positive image of our patrons toward our school system. I believe the image that exists now and the court involvement, or the overseeing of the court, does make that goal more difficult to accomplish, to reach that positive image.

THE COURT: Well, what you are really saying is that this is what you might call a fallout of the desegregation requirement of the constitution; is that what you say?

THE WITNESS: I believe I would agree with you.

THE COURT: Any further questions? You may step down, Dr. Smith. Call your next witness.

(Witness withdraws)

[p. 129] MR. JOHNSON: Defendant rests.

THE COURT: Let the record show the School Board now rests its motion.

Does the defendant have any evidence to offer?

MR. WALKER: Plaintiff is ready, your Honor.

THE COURT: Plaintiff, excuse me. Call your witness.

SHIRLEY DARRELL,

called as a witness on behalf of the plaintiff, being of lawful age and having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Jones:

Q Would you state your name for the record, please?

A Shirley A. Darrell.

Q Mrs. Darrell, how long have you been a resident of this community?

A All my life.

Q Did you attend public schools here?

A I did.

Q Do you presently have a child in the school system?

A Yes, I do.

Q Are you employed at this point?

A Yes. I am Director of McFarland Branch, YWCA.

Q And do you serve on the Biracial Committee?

A Yes, I do.

Q What position do you hold on that committee?

[p. 130] A I am presently the Chairperson of the Committee.

Q How long have you served on the Committee and how long have you been Chairperson?

A I served on the Committee approximately a year and a half. I have been the Chairperson since August of this year.

Q As a parent of a black child in this school system and as a member and Chairperson of the Biracial Committee, do you have any view about whether or not the Oklahoma City School District as now constituted has reached a point of total desegregation at all levels and in all activities?

A I have to sincerely say that I think they are moving toward it. My personal opinion at this point is that at this point in time I would not be able to answer that affirmatively, but I do feel that they are making very definite progress in that direction.

Q But you cannot say at this time that they have fulfilled that requirement?

A That's correct.

Q Before we get into the specifics of your belief, can you tell us something about your views on the Biracial Committee's relationship with the administrative staff and the School Board over the past year or so?

A Well, the Biracial Committee has, since I have been on the Committee, always enjoyed a very good relationship and good rapport as far as with the School Administration and the [p. 131] officials. We have had no real problems in dialoging or communicating with them or obtaining information; and I think that basically the Committee, in its report to the Court recently, would reflect at this point in time that the Committee, although they feel that there has been great progress, that there is so much newness at this point that we still have great concerns that say all vestiges of segregation have been removed.

Q Let's talk about some of those specific concerns. Would you care to discuss the Innovative School for a moment?

A I'm sorry. I didn't hear you.

Q Would you care to discuss the Innovative School and its effect on black students within the system?

A Well, specifically we were concerned about the fact, speaking basically of trying to carry the Committee's sentiments, on the report that we have it does indicate that there is a principal and an assistant at that school. Those are the statistics that are in our report, and yet we get different information, that there is no assistant or what-have-you.

One thing that does bother us from time to time is that sometimes it's a pure question of credibility of the information which we obtain. The Innovative School is one of those situations. We have gotten a lot of different replies to the same questions, which bothers us.

For example, on how the students are going to be selected, [p. 132] how the staff is going to be selected, and that type of thing.

I personally am concerned about the number of students that the Innovative School is supposed to accommodate. I am concerned about the fact that that is a very large facility for only two hundred youngsters. In my own mind, for example, I could see that two hundred youngsters could function much more appropriately and effectively at a facility such as Dunbar, a much smaller facility. I would think that it wouldn't cost as much to operate. So I have lots of concerns about the Innovative School being practical as well as economic.

Q Although you have previously indicated that at least the relationship between the Committee and the Board and staff has been amicable, you also mentioned that there is a credibility problem. Will you tell us a little bit more about that?

A Well, like I say, it's mainly whether or not the information we get at one point in time is in fact accurate, because as I indicate, there are several instances when we get conflicting information and it makes it difficult to really know which set of data to utilize and when you know to decide that, what is said is correct.

Q In your opinion, does that bear on the good faith of the present School Board?

A Well, I don't know actually, whether – I don't know that it has been a deliberate sort of thing. I don't want to say that it is deliberate, but I say that there is, there is a gap [p. 133] there, a void. I don't want to say that they are deliberately feeding us misinformation but I think it results from the fact that many times they do something at one time and then perhaps they realize they should have done that differently so then they do it differently and they change the information on it.

Q Are you familiar with the '74-'75 suspension and disciline [sic] statistics that have been previously introduced here?

A Yes.

Q Did the Biracial Committee receive those?

A Yes, we did.

Q Can you tell us that the reaction of the members of the Biracial Committee was to those statistics?

A The reaction was alarming. We were very disturbed, and we were disturbed for many reasons and I,

you know, basically because the numbers was so disproportionate; so then, you know, we were, you could say at one point almost frustrated.

For example, we certainly could not conclude that these incidents were racial because the kids had to be fighting each other, you know, all the black kids had to be fighting black kids, because these were the only kids being thrown out or whatever the incidents were, because as you see, the numbers were so far off, like six blacks and no whites.

So at least we were happy that the situations were not racial, because there was only one race involved that we were very disturbed about, from that point on about why.

[p. 134] Q Is that an area in which you think the Biracial Committee can have input in dealing with that problem?

A Well, how do you mean? I'm not sure I am following you.

Q Do you think that is a source of continued dialog between the Biracial Committee and the Board and staff, and that your input is important in dealing with the problem of the disparity of suspensions of black students?

A Well, yes, I would think so, and I would think that probably it would be advantageous, you know, further on down the line or in subordinate echelons because it was interesting to the Committee to discover last year that the lower echelons of the Administration are not afforded the advantages of our report.

For example, we had a meeting with some principals last year and they indicated they had never seen a Biracial report, so they had no idea as to what any of the recommendations were.

Several of the recommendations they were favorable to and they indicate that, you know, that they could have been helpful to them but that they were not afforded the information; so I would say yes, you know, that on down the line if the information were filtered down it could be helpful.

Q Now under the new suspension policy I think Mr. English indicated that handbooks were distributed during the '74-'75 school year. Was that the understanding of the Biracial Committee?

[p. 135] A Well, to answer your question, we never did really get an understanding. We got there again several different replies. We were given to understand at one point that the handbooks were being stapled, for example. Then at another point we were given to understand that they had been distributed. Then at another point we were given to understand that they were being redone, so on our last inquiry we asked to be informed as to how specifically the handbooks were in fact distributed, were they, for example, distributed at PTA, do the kids have to sign for them, so that the Biracial Committee was never in a position to either concur or disagree that the handbooks were ever distributed.

Q Do you have any opinion, do you have anything which indicates that perhaps the Biracial Committee

could be helpful in dealing with the problems of extracurricular participation of black students; is that an area the Biracial Committee can be helpful in?

A Well, I don't know that the Biracial Committee, if I am following your question, could be helpful. I think that are a lot of things that we could suggest or, you know, different things, but I really think that that –

Q Is that an area of concern?

A That's a definite area of concern, yes, and it concerns us because here again the numbers are too disproportionate. We are just not convinced that all the girls are not interested [p. 136] in cheerleading. We are not really convinced that extracurricular activities are passe for black kids, when heretofore they have been as near and dear to them as any other child, you know, during its adolescent years, so we are concerned about that.

Q Do you view those results as a vestige of discrimination and desegregation?

A Yes, I guess I would have to say that I do.

Q Are there any other areas in which the Biracial Committee has particular concern about the functioning of the school system and whether or not it is meeting the constitutional standard at the present time?

A We have a lot of concerns about the fact that the Administration, although it changes, it does not really – I am at a loss exactly how to say this – although it changes and people change positions and people change slots, it's more or less like a maze, you know, they just go around, but then there is really no change, for example, in the upper echelon.

Now we were very concerned about the fact that there was only one black on the upper echelon, then the fact that in the reorganization now there are three. There really aren't any more people. They are the same three blacks that were there all the time. It's just they lumped them all together in one echelon category.

It's these kinds of things that bother us.

[p. 137] Q Are you saying, Mrs. Darrell, you would like to believe that the School Board and staff are acting in good faith, but that the factors you have talked about and the actions of the School Board cannot lead you to come to that conclusion at the present time?

A That is absolutely correct. I really hate to say it is, but that is my opinion at this point.

MR. FRENCH: We have no questions, your Honor.

THE COURT: All right, you may step down, Mrs. Darrell.

(Witness withdraws)

THE COURT: All [sic] your next witness.

MR. WALKER: That's our witness, your Honor. We rest on that point.

THE COURT: All right. Does counsel on either side have any argument to make or suggestion to make? What do you have to say, Mr. Johnson, if anything?

MR. JOHNSON: I would waive any argument if Mr. Walker wants to.

MR. WALKER: I don't think any argument is appropriate, your Honor. I think that facts are rather clear.

I would like to submit our Memorandum and our Statement and Affidavit to the Court at this time for the Court's consideration.

THE COURT: What is this? Your statement of what?

[p. 138] MR. WALKER: Have to talk a little bit louder.

I should like to submit at this time to the Court our Memorandum in support of our Motion for Counsel Fees and supporting affidavit.

THE COURT: For attorney fees?

MR. WALKER: Yes, sir.

THE COURT: Have you received a copy of this, Mr. Johnson?

MR. JOHNSON: I received copies just immediately prior to the hearing. I would like to have time to study what he has.

THE COURT: Of course you should have an opportunity to file a response to it and then the Court should set it down and have a hearing. This is an important matter both for Mr. Walker and for the School Board and for the Court.

This calls for a full blown-up hearing as to all the facts and circumstances about it, and it's a matter that

should be attended to, I think, without any unnecessary delay.

How much time do you care to have to file your response, Mr. Johnson?

MR. JOHNSON: Oh, about fifteen days.

THE COURT: Fifteen days. Then will it be ready to set down here evidence as to what a reasonable fee is, what the fee should be?

MR. JOHNSON: As far as I know we will be.

[p. 139] THE COURT: Will that be agreeable?

MR. WALKER: That will be agreeable, your Honor. We do not need any reply time. If the Court would just set it down as soon after fifteen days as possible.

THE COURT: After you file it why the Court will ask the Clerk, direct the Clerk to set it down.

MR. WALKER: Thank you.

THE COURT: I want to take this opportunity to thank each and every member of the present Biracial Committee and the Biracial Committees in days and weeks and years gone by. To me this Biracial Committee has done a yeoman job. They have helped the Court in many ways and I know they have helped the School Board in many ways.

I can't help but give the Biracial Committee much credit for the movement of the School Board as it now exists and it's now operated, as compared to the way it

was operating, the School Boards were operating before the Biracial Committee came into existence.

The Biracial Committee in my judgment has done much to iron out much of the problems that the Court had and the School Board had with the Court, and I hope it continues at least for awhile.

I also want to take this opportunity to thank the present members of the School Board for their attitude and cooperative attitude, in looking forward to bringing this [p. 140] school desegregation plan into full congressional or constitutional compliance with the law.

This is the only interest that the Court has in this case at all; that is, to bring about a constitutional compliance in the educational system, the School Board in Oklahoma City. The School Board in what they have done and what they are doing and plan to do is certainly encouraging to the Court. It does warm my heart to know that the day is coming when, like the Supreme Court says, there will be no black schools or white schools, but all the schools will be schools without whether it be black or white or anything like that.

Well, if there is nothing further to come before the Court, we will take a recess. Anything further?

Court is in recess.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. CIV-9452

ROBERT L. DOWELL, ETC., *et al.*,

Plaintiffs,

vs.

BOARD OF EDUCATION OF THE
OKLAHOMA CITY PUBLIC SCHOOLS, ETC., *et al.*,

Defendants.

[Filed Jan. 18, 1977]

ORDER TERMINATING CASE

There is now pending before the Court a Motion by the defendant to close the case. A hearing has been conducted by the Court to receive the evidence of both plaintiff and defendants concerning the state of desegregation in the Oklahoma City Public Schools.

The Court has carefully reviewed this evidence and all of the reports it has received from the defendant and the Biracial Committee since the inception February 1, 1972 of "A New Plan of Unification for the Oklahoma City Public School System," commonly know as the Finger Plan. The Court has concluded that this was indeed a Plan that worked and that substantial compliance with the constitutional requirements has been achieved. The School Board, under the oversight of the Court, has operated the Plan properly, and the Court does not foresee

that the termination of its jurisdiction will result in the dismantlement of the Plan or any affirmative action by the defendant to undermine the unitary system so slowly and painfully accomplished over the 16 years during which the cause has been pending before the Court.

Constitutional principles so bitterly contested by former members of the Board have now become a part of the fabric of the present school administration. The only standard ever imposed by the Court has been obedience to the Constitution. The School Board, as now constituted, has manifested the desire and intent to follow the law. The Court believes that the present members and their successors on the Board will now and in the future continue to follow the constitutional desegregation requirements.

Now sensitized to the constitutional implications of its conduct and with a new awareness of its responsibility to citizens of all races, the Board is entitled to pursue in good faith its legitimate policies without the continuing constitutional supervision of this Court. The Court believes and trusts that never again will the Board become the instrument and defender of racial discrimination so corrosive of the human spirit and so plainly forbidden by the Constitution.

ACCORDINGLY, IT IS ORDERED:

1. The Biracial Committee established by the Court's Order of December 3, 1971, which has been an effective and valued agency of the Court in the implementation of the Plan, is hereby dissolved;

2. Jurisdiction in this case is terminated ipso facto subject only to final disposition of any case now pending on appeal.

Dated this 18th day of January, 1977.

/s/ Luther Bohanon
United States District Judge

[606 F. Supp. 1548 (W.D. OKL. 1985)]

Robert L. DOWELL, et al. Plaintiffs,

v.

BOARD OF EDUCATION of the OKLAHOMA CITY PUBLIC SCHOOLS, et al. Defendants,

Applicant for Intervention: Yvonne Monet Elliot and Donnoil S. Elliot, both minor children, by and through their parent and guardian, Donald R. Elliot; et al.

NO. CIV-9452.

United States District Court,
W.D. Oklahoma.

April 25, 1985.

John W. Walker, Little Rock, Ark., Ted A. Shaw, New York City and Lewis Barber, Jr., and Jethro Curry, Oklahoma City, for petitioners.

Ronald L. Day, Oklahoma City, for defendant Bd. of Educ.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BOHANON, District Judge.

On February 19, 1985, the petitioners filed a Motion to Reopen this desegregation case to challenge the constitutional validity of a recently proposed Student Reassignment Plan which curtails cross-town busing in Oklahoma City of elementary school children in grades one through four. In their motion, petitioners allege that the Oklahoma City School District has not achieved unitary status, and

that the School Board's proposed plan creates racially identifiable neighborhood schools thereby resegregating the Oklahoma City School District.

On March 6, 1985, the defendant School Board filed a Response to Petitioners' Motion alleging the school district became unitary in 1977 and that the proposed plan was justified and constitutional.

On March 13, 1985, the court entered an Order finding that petitioners' Motion and defendants' Response joined the issues, and set the Motion to Reopen down for an evidentiary hearing. The hearing was conducted on April 15 and 16, 1985. At the hearing the petitioners were represented by John W. Walker of Little Rock, Arkansas, Ted A. Shaw of New York City, New York, Lewis Barber, Jr., of Oklahoma City, Oklahoma, and Jethro Curry of Oklahoma City. The defendant Board of Education was represented by Ronald L. Day of Oklahoma City.

Case History

This action was originally commenced in October, 1961, as a class action seeking equitable relief against the Oklahoma City Board of Education for operating a state compelled dual system of education. In July, 1963, this court handed down its decision finding that the Oklahoma City School Board's refusal to grant a transfer to a black student from a predominantly black school to a predominantly white school constituted unlawful race discrimination. *Dowell v. School Board of the Oklahoma City Public Schools,* 219 F.Supp. 427 (1963). During the years that followed, this case again came before this court and appellate courts on issues relating to the Oklahoma City

School Board's obligation to convert a state-compelled dual school system into a unitary system which would eliminate racial discrimination.

In February, 1972, after conducting many hearings, this court ordered the Oklahoma City School Board to implement what come to be known as the "Finger Plan." *Dowell v. Board of Education of the Oklahoma City Public Schools,* 338 F.Supp. 1256 (W.D.Okl.1972). Under the Finger Plan, high school attendance zones (grades 9-12) were restructured so that each high school enrolled both black and white pupils. To accomplish this, an elementary school feeder system was used so that students were assigned to a high school based on the elementary school attendance zone in which their home was located. Similarly, middle schools (grades 6-8) were desegregated by the establishment of attendance zones for each school. At the elementary level all majority black schools were converted to fifth year centers, while all other schools were to serve grades 1-4. White students in the group attended their neighborhood school for grades 1-4, and attended the formerly black schools for the fifth grade. Black students formerly assigned to the schools now used as fifth year centers were split up and attended the majority white schools for grades 1-4. Black students in fifth grade attended the fifth grade center which was previously their neighborhood school. Elementary schools located in naturally integrated neighborhoods qualified for an exception to the general plan known as "stand alone" status, a term to be explained further *infra,* and operated as schools enrolling grades kindergarten through fifth. Kindergartens existed at each elementary school and were permitted to continue without forced desegregation

through busing. Parents of kindergarten children were given the freedom to choose the school their child attended. The freedom of choice was justified because it permitted kindergarten children to go to the school in the vicinity of the place where their mother was working, or to walk to kindergarten with other siblings or neighborhood children. *Id.* at 1267-1268.

The court's decision in February, 1972 implementing the Finger Plan was upheld on appeal. *Dowell v. Board of Education of the Oklahoma City Public Schools*, 465 F.2d 1012 (10th Cir.1972), *cert. denied* 409 U.S. 1041, 93 S.Ct. 526, 34 L.Ed.2d 490 (1972).

The Oklahoma City Board of Education implemented and properly operated the Finger Plan for several years. After the Finger Plan had been in operation for some time, the Board of Education filed a "Motion to Close Case" on the grounds that it "[had] eliminated all vestiges of state-imposed racial discrimination in its school system and [was] . . . operating a unitary school system." Thereafter, the court conducted a hearing to receive evidence from plaintiffs and defendants concerning the state of desegregation in the Oklahoma City public schools, and on January 18, 1977, entered an order relinquishing its jurisdiction and terminating this case. The "Order Terminating Case" states in pertinent part as follows:

> . . . [T]he School Board, under the oversight of the Court, has operated the Plan properly, and the Court does not foresee that the termination of its jurisdiction will result in the dismantlement of the Plan or any affirmative action by the defendant to undermine the *unitary system* so slowly and painfully *accomplished* over the 16 years during which the cause has been pending before the Court."
>
> . . . .
>
> Now sensitized to the constitutional implications of its conduct and with a new awareness of is responsibility to citizens of all races, the Board is entitled to pursue in good faith its legitimate policies without the continuing constitutional supervision of this Court. . . .
>
> ACCORDINGLY, IT IS ORDERED:
>
> 1. The *Biracial Committee* established by the Court's Order of December 3, 1971, which has been an effective and valued agency of the Court in the implementation of the Plan, is hereby dissolved;
>
> 2. *Jurisdiction* in this case is *terminated* ipso facto subject only to final disposition of any case now pending on appeal. (emphasis added)

Plaintiffs did not appeal the Order Terminating Case. To this date the Oklahoma City Board of Education continues to implement the substance of the Finger Plan with minor modifications. There has been no attempt to revive or reopen this case during the eight years which passed from the time this court terminated its jurisdiction until the present contest.

Findings of Fact

1. One of the many elements of the Finger Plan carried forward by the Oklahoma City Board of Education was the provision for kindergarten through fifth grade (K-5) "stand alone" schools. That is, when racial balance in a neighborhood is achieved through natural integration the elementary school qualifies as a K-5

"stand alone" school. When this status is achieved, the fifth grade is returned to the elementary school, and the children are no longer bused into or out of the elementary school to achieve racial balance.

2. As the years passed by, more and more neighborhoods in Oklahoma City became naturally integrated. By mid-1984, more than twelve years after the Finger Plan had been in operation, more than a dozen elementary schools were located in neighborhoods with a racial balance that qualified them for "stand alone" school status.

3. In 1984 the Board of Education recognized Bodine Elementary School in southeast Oklahoma City as a K-5 "stand alone" school. In the process, the School Board noticed certain inequities (hereinafter identified) starting to surface with the advent of more and more schools qualifying for K-5 "stand alone" status.

4. On July 16, 1984, the Board of Education appointed a committee to study the school district's K-5 schools, and to report back to the Board with positive recommendations. The committee consisted of three School Board members. Dr. Clyde Muse, who is black and has a Ph.D. in education, chaired the committee. Also on the committee were Mrs. Susan Herr.es and Mrs. Betty Hill. Both of these School Board members had prior experience as certified school teachers. The committee frequently called upon the school district's research department for data and statistics needed during the study. During the time the committee was meeting, Dr. Muse traveled to the Office of Civil Rights in Dallas, Texas, for consultation and advice.

5. On November 19, 1984, the committee presented a report to the entire Board concerning its study on the far-reaching effects of an increased number of K-5 "stand alone" schools, and recommended that the Board adopt a new Student Reassignment Plan which, among other things, eliminated K-5 "stand alone" schools.

6. The committee study revealed that as more neighborhoods become naturally integrated and their schools qualify for K-5 "stand alone" status, the young black students previously bused into those schools would have to be reassigned to other schools. Since most of the naturally integrated schools are centrally located in the City, the reassignment of young blacks would be to schools located further north, west or south. The effect would be to increase the busing burden in terms of time and distance on young black children in the first through fourth grades. Further, the committee pointed out that when a "stand alone" school reacquires its fifth grade, this causes the student population at the fifth year centers located in the northeast quadrant of the district to drop, and the centers to be subjected to closing.

7. Also, the committee was concerned with the decline of parental involvement in the schools, and wanted a plan which would have the effect of increasing parental involvement. Curriculum uniformity was also a consideration of the committee. All fifth year centers have enrichment programs including intramurals, string instruments, the Opening Doors program and special interest sessions. The committee felt it would be increasingly difficult to make these fifth year center programs equally available within the new K-5 "stand alone" schools.

8. After the committee made its report and submitted its recommendation, public hearings were conducted at various schools throughout the community to discuss the proposed plan. Thereafter, a special School Board meeting was conducted on December 10, 1984, so that anyone in the community could state their views and make suggestions about the proposed plan directly to the Board of Education. The Superintendent of Schools sent copies of the proposed plan to the Office of Civil Rights, and invited personnel from the Office of Civil Rights to attend the public hearings where the proposed plan was being discussed.

9. As a result of positive input from the public, the committee recommended that certain specific amendments not affecting the overall character of the plan be made. Thereafter, on December 17, 1984, the Oklahoma City Board of Education unanimously adopted the Student Reassignment Plan which is to go into effect at the commencement of the 1985-86 school year.

10. The fundamental elements of the plan, admitted into evidence as plaintiffs' Exhibit #1 and incorporated by reference in these findings of fact, are as follows:

(a) The Plan calls for K-4 neighborhood schools throughout the district. This eliminates compulsory busing of young black children, grades 1-4, to elementary schools outside their immediate neighborhood;

(b) An equity officer is to monitor all schools to insure the equality of facilities, equipment, supplies, books and instructors in all schools. An equity committee is to assist the equity officer and recommend ways to integrate

students at any racially identifiable elementary schools several times each year;

(c) A "majority to minority" transfer policy will allow elementary students assigned to a school where their race is in the majority to obtain a transfer to a school in which their race will be in the minority. The transfer option is encouraged through district-provided transportation;

(d) All faculties and staff will remain integrated at all schools in the district; and

(e) Fifth year centers will be located in all sections of the school district. All fifth year centers, middle schools, and high schools in the school district will continue to be racially balanced with the aid of busing.

11. Population changes have occurred in the Oklahoma City School District from the time the Finger Plan was implemented. In 1970, 325,000 people lived in the school district. In 1980, 305,000 people lived in the school district. In 1971, 68,840 students attended school in the district. In 1985, 40,375 students attend school in the district. In 1971, the student population was 23.4% black. In 1985, the student population is 38.3% black. In 1971, the student population was 76.6% white. In 1985, the student population is 49.6% white. (The failure of the 1985 figures to add up to 100% is due to the exclusion of non-black minorities from the figures used to calculate percentages of whites and blacks. This apparently was not done with the figures presented to the court in 1971.)

12. Presently, the racial composition of the faculty and staff serving Oklahoma City Public Schools is as follows:

Teachers	30.4% black
Principals	28.4% black
Other Administrators	35.5% black
Coaches	45.6% black
Counselors	41.3% black
Special Ed. Teachers	30.2% black
Support Personnel	45.9% black

Also, the Oklahoma City Board of Education has in the past and continues to implement and follow an affirmative action plan. At present, racial balance within 15 percentage points of the proportions in the system-wide student population is maintained in all classes in grades 1-12 through busing.

13. Under the Student Reassignment Plan there will be 64 elementary schools. Eleven of those schools will be ninety percent (90%) or more black. Twenty-two of the 64 elementary schools will be ninety percent (90%) or more white and non-black minorities. The remaining 31 elementary schools will be racially mixed between blacks and non-blacks. The Oklahoma City Board of Education has neither altered the boundaries to these elementary schools so as to create a certain number of racially identifiable schools, nor attempted to fix or alter demographic patterns to affect the racial composition of its schools.

14. Under the Student Reassignment Plan the curriculum in all the elementary schools will be the same. The special education programs offered in all schools will be the same. The student-teacher ratio in all schools remain the same. Facilities, equipment, supplies and textbooks will be equal. As was pointed out previously, the faculties and staffs at each elementary school will remain integrated.

15. In the early 1970's, there were approximately 94 parent-teacher associations within the school district with a total membership in excess of 25,000 people. Presently, there are only 14 parent-teacher associations and the membership is less than 5,000. Parental involvement is an essential ingredient to a quality education. The Board of Education previously took steps in an effort to increase parental involvement. An attempt was made to implement a district-wide parents council. School board meetings were moved out into the community. Buses were sent to certain schools to pick up parents for meetings. However, these efforts failed. The court finds that the degree of parental involvement in the schools is a legitimate concern of the Board of Education, and that the School Board's proposed plan will have the effect of increasing parental involvement at the elementary school level.

16. Student participation in extracurricular activities is also an essential ingredient to a quality education. The School Board's proposed plan will give elementary students a greater opportunity to participate in such activities.

17. The School Board has a genuine concern for maintaining schools in all areas that the school district serves. Also, the amount of time and distance traveled by elementary school children on buses is a genuine concern of the Board of Education.

18. The Board of Education adopted the Student Reassignment Plan for legitimate purposes: to protect against the loss of schools in the northeast quadrant of the district; to maintain fifth year centers throughout the

district; to reduce the busing burden on young black students; to increase parental and community involvement in the schools; and to improve programs and provide elementary children with a greater opportunity for participation in extracurricular activities.

19. The Student Reassignment Plan is not discriminatory, and it was not adopted by the Oklahoma City Board of Education with the intent to discriminate on the basis of race or with a deliberate purpose to affect the racial composition of the schools. Any change in the racial composition of the schools that may be expected to result from the plan is an unintended and largely unavoidable consequence of other objectives sought for the benefit of all student. The court is convinced that the Board of Education is equally concerned about the health, education and well-being of both black students and white student.

20. The School Board members on the committee who recommended the Student Reassignment Plan were qualified by virtue of their educational background and experience to conduct the study and formulate the various components of the Student Reassignment Plan. The Student Reassignment Plan is educationally sound, and when implemented, will accomplish the objectives of the Board of Education.

Conclusions of Law

1. The Supreme Court in *Green v. New Kent County School Board*, 391 U.S. 430, 437-38, 88 S.Ct. 1689, 1693-94, 20 L.Ed.2d 716 (1968), held that once it is determined that a school district is operating a dual system, then the

school authorities are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." In *Green*, the Court identified six components of a school system which must be desegregated before the entire system can achieve unitary status: faculty, staff, transportation, extracurricular activities, facilities, and composition of the student body. *Id.* at 435, 88 S.Ct. at 1692.

2. The specific question of when a district court should declare a school system "unitary" and terminate its remedial jurisdiction has been addressed by the Supreme Court and the Tenth Circuit Court of Appeals. The Supreme Court in *Raney v. Board of Education*, 391 U.S. 443, 449, 88 S.Ct. 1697, 1700, 20 L.Ed.2d 727 (1968) held that "in light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved." Similarly, in an earlier decision in this very case, the Tenth Circuit Court of Appeals stated that "jurisdiction should be held until such time as the court is satisfied that the decreed unconstitutional practices are eliminated and appellant board is found to be in full compliance with the teachings of the *Brown* case." *Board of Education of Oklahoma City Public Schools v. Dowell*, 375 F.2d 158, 168 (10th Cir.1967).

3. This court in its 1972 order directing the implementation of the Finger Plan recognized that the court "was required to retain jurisdiction to evaluate the Plan in practice and to see that state imposed segregation was completely removed." *Dowell v. Board of Education of the*

Oklahoma City Public Schools, 338 F.Supp. 1256, 1258, footnote 1 (W.D.Okl.1972).

4. At the time this court totally relinquished its jurisdiction over this case in 1977, the court was convinced that the Finger Plan had been carried out in a constitutionally permissible fashion and that the School District had reached the goal of being a desegregated non-racially operated and unitary school system. In the Order Terminating Case this court specifically found that the School Board had complied with the requisite constitutional requirements and recognized that a "unitary system" had been "accomplished" over the previous sixteen years. The Order Terminating Case was not appealed, and no attempt to revive or reopen this litigation was made during the eight years which passed from the time the Order was entered in 1977 until the Motion to Reopen was filed in 1985.

5. The Supreme Court has approved the view that the fact that a case is in the nature of a suit in equity, authorized by 42 U.S.C. § 1983, as is this one, "presents no categorical bar to the application of res judicata and collateral estoppel concepts." *Allen v. McCurry*, 449 U.S. 90, 97, [101 S.Ct. 411, 416, 66 L.Ed.2d 308] (1980). These concepts were explained by the Court as follows:

> Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. *Cromwell v. County of Sac*, 94 U.S. 351, 352 [24 L.Ed. 195]. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of

> action involving a party to the first case. *Montana v. United States*, 440 U.S. 147, 153 [99 S.Ct. 970, 973, 59 L.Ed.2d 210]. As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. *Id.* at 153-154 [99 S.Ct. at 973-974].

Id. at 94, 101 S.Ct. at 414. In the present case, this court's finding in 1977 that a unitary system had been achieved by the Oklahoma City public schools is res judicata as to those who were then parties to this action. At the time of that Order, the plaintiffs in this action represented the entire class of school-aged black children within the Oklahoma City Public School district, and the present petitioners acknowledge that this class included *future* black children. At the very least, the present applicants for intervention, appearing through their parents and guardians, seek to represent a similarly-defined class of black children and are themselves members of said class. Though the individual members of this class may have changed with the passage of time, this change cannot defeat the preclusive effect of this court's original finding of unitariness. Courts have held that even when a first case was a so-called "spurious" class action "a public body should not be required to defend repeatedly against the *same* charge of improper conduct if it has been vindicated in an action brought by a person or group who validly and fairly represent those whose rights are alleged to have been infringed." *Bronson v. Board of Education*, 525 F.2d 344, 349 (6th Cir.1975) *cert. denied*, 425 U.S. 934, 96 S.Ct. 1665, 48 L.Ed.2d 175 (1976) (emphasis in original). There has been no showing in this case that the

original plaintiffs did not validly and fairly represent all those whose rights are concerned here. The present petitioners are, therefore, collaterally estopped from relitigating the issue of the unitary character of the Oklahoma City Public Schools as of 1977 even in res judicata itself is not strictly applicable to the facts of this attempted class intervention. *Id.; see Bell v. Board of Education,* 683 F.2d 963 (6th Cir.1982); *L.A. Unified School District v. L.A. Branch NAACP,* 714 F.2d 935 (9th Cir.1983) (*Bronson* cited with approval, but res judicata found to be the more applicable doctrine under the circumstances of the case).

6. Furthermore, this court finds that the Oklahoma City School District displays today, as it did in 1977, all indicia of "unitariness." It has now been thirteen years since cross-town busing was introduced and almost twenty-five years since the start of desegregation litigation in Oklahoma City. The evidence in this case demonstrates that the Oklahoma City School District remains unitary today. The School Board, administration, faculty, support staff, and student body are integrated. Further, transportation, extracurricular activities and facilities within the school district are equal and non-discriminatory. This court's finding of unitariness in 1977 was fully justified, and remains a finding which is today fully justified.

7. Supreme Court precedent is clear that once a school system has become unitary, the task of a supervising federal court is concluded. "Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination

through official action is eliminated from the system." *Swann v. Charlotte-Mecklanburg* [sic] *Board of Education,* 402 U.S. 1, 31-32, 91 S.Ct. 1267, 1283-1284, 28 L.Ed.2d 554 (1971). Where unitary status has been achieved, district court intervention is normally not necessary unless there is a showing that the school district "has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools." *Id.* at 32, 91 S.Ct. at 1284. "[H]aving once implemented a racially neutral attendance pattern in order to remedy the perceived constitutional violations on the part of the defendants, [a District Court has] fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." *Pasadena City Bd. of Education v. Spangler,* 427 U.S. 424, 436-37, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976).

8. The Tenth Circuit Court of Appeals has recognized "that neighborhood school attendance policies, when impartially maintained and administered, do not violate any fundamental Constitutional principle or deprive certain classes of individuals of their Constitutional rights." *Board of Education of Oklahoma City Public Schools v. Dowell,* 375 F.2d 158, 166 (10th Cir.1967), *cert. denied,* 387 U.S. 931, 87 S.Ct. 2054, 18 L.Ed.2d 993 (1967).

9. Also, the Supreme Court has recognized that in a system that has not been deliberately constructed and maintained to enforce racial segregation, "it might well be desirable to assign pupils to schools nearest their homes." *Swann,* 402 U.S. at 28, 91 S.Ct. at 1282.

10. Congress has also passed legislation recognizing the desirability of neighborhood schools. 20 U.S.C. § 1701 states:

> (a) The Congress declares it to be the policy of the United States that –
>
> (1) All children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex or national origin; and
>
> (2) The neighborhood is the appropriate basis for determining public school assignments.

The fact that the Student Reassignment Plan adopted by the Oklahoma City Board of Education calls for neighborhood schools in grades K-4 does not offend the Constitution.

11. In *Swann*, the Supreme Court noted that, "the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." 402 U.S. 24, 91 S.Ct. 1280. Furthermore, the existence of some one-race schools within a district "is not in and of itself the mark of a system that still practices segregation by law." *Id.* at 26, 91 S.Ct. at 1281.

12. The existence of racially identifiable schools is not unconstitutional without a showing that such schools were created for the purpose of discriminating on the basis of race. *Keyes v. School District No. 1*, 413 U.S. 189, 93 S.Ct. 2686, 37 L.Ed.2d 548 (1973). The presence of discriminatory intent may not be inferred solely from the disproportionate impact of a particular measure upon one race. The Supreme Court has clearly stated that "official action will not be held unconstitutionally solely because it

results in a racially disproportionate impact." *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 264-65, 97 S.Ct. 555, 562-63, 50 L.Ed.2d 450 (1977); *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). The Student Reassignment Plan was not created for the purpose of discriminating on the basis of race.

13. The Supreme Court has recognized the optional majority-to-minority transfer provision as a useful part of a desegregation plan. *Swann*, 402 U.S. at 26-27, 91 S.Ct. at 1281.

14. The Supreme Court has also acknowledged that:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process . . . [L]imits on time of travel will vary with many factors, but probably with none more than the age of the students involved.

Swann, 402 U.S. at 30-31, 91 S.Ct. at 1283.

15. The decision whether a case should be reopened under Federal Rule 60(b)(6) is discretionary. Special circumstances must be shown in order to justify relief under this rule. *Stewart Securities Corp. v. Guaranty Trust Co.*, 71 F.R.D. 32 (W.D.Okl.1976). The Student Reassignment Plan of the Oklahoma City Board of Education is constitutional, and special circumstances are not present which would justify reopening this litigation.

An appropriate order will accordingly be entered herein.

ORDER

In accordance with the findings of fact and conclusions of law entered herein this day,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Reopen Case, to Intervene and For Further Relief filed by the applicants for intervention is denied.